

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 249

WYATT TEE WALKER, ET AL., PETITIONERS,

vs.

CITY OF BIRMINGHAM ETC.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

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**IN THE SUPREME COURT OF ALABAMA  
SIXTH DIVISION**

**SIXTH DIVISION**

No. \_\_\_\_\_

**WYATT TEE WALKER, RALPH ABERNATHY, A. D. KING, ED  
GARDNER, CALVIN WOODS, ABERHAM WOODS, JR., ANDREW  
YOUNG, JOHNNY LOUIS PALMER, J. W. HAYES, N. H.  
SMITH, JR., JOHN THOMAS PORTER, T. L. FISHER, JAMES  
BEVELS, F. L. SHUTTLESWORTH, MARTIN LUTHER KING,  
JR., JOHN DOE and RICHARD ROE, whose names are other-  
wise unknown and who will be added as parties respon-  
dent, when ascertained, Petitioners-Respondents,**

**vs.**

**CITY OF BIRMINGHAM, A Municipal Corporation of the  
State of Alabama, Respondent-Complainant.**

**PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT  
OF THE TENTH JUDICIAL CIRCUIT OF ALABAMA, JEFFERSON  
COUNTY, ALABAMA, IN EQUITY—Filed May 13, 1963**

**To the Honorable Chief Justice and Associate Justices  
of the Supreme Court of Alabama:**

**Come the petitioners-respondents and respectfully peti-  
tion this Honorable Court to review and determine the  
decree and order entered herein on April 26, 1963, by the  
Circuit Court for the Tenth Judicial Circuit of Alabama,  
Jefferson County, Alabama, In Equity, adjudging peti-  
tioners in contempt and fixing punishment against peti-  
tioners and each of them therefor as five days in the County  
Jail, commencing at 10:00 A.M., on May 16, 1963, and a**

fine of fifty dollars as to each in case No. 130-173 styled as, City of Birmingham, Complainant, v. Wyatt Tee Walker, et al., Respondents.

Copies of the applicable pleadings, in the Circuit Court are hereto attached as Exhibits and made a part of this application. A transcript of the evidence is also attached hereto and made a part of this application.

Petitioners aver that the City of Birmingham on April 10, 1963, filed a bill of complaint in the court below alleging: (1) that petitioners-respondents, Wyatt Tee Walker, Ralph Abernathy and Martin Luther King, Jr., are non-residents of the State of Alabama, residing in the State of Georgia; (2) that petitioner-respondent, F. L. Shuttlesworth is a non-resident of the State of Alabama, residing in Cincinnati, Ohio, and that petitioner-respondent, N. H. Smith, Jr., is a resident of Jefferson County, Alabama, residing at 1700 South 1st Street, Birmingham, Alabama; (3) that numerous other named respondents not petitioners here [fol. 8] are residents of Jefferson County, Alabama; (4) that the Alabama Christian Movement for Human Rights is an unincorporated organization and that petitioner-respondent F. L. Shuttlesworth is president; (5) that the Southern Christian Leadership Conference is an unincorporated organization and petitioner-respondent Martin Luther King, Jr., is president; (6) that on specified dates during the month of April, 1963 respondents named, including these petitioners, "sponsored and/or participated in and/or conspired to commit and/or to encourage and/or to participate in certain movements, plans or projects commonly called 'sit-in' demonstrations 'kneel-in' demonstrations, mass street parades, trespasses on private property after being warned to leave the premises by the owners of said property, congregating in mobs upon the public streets and other public places, unlawfully picketing private places of business in the City of Birmingham, Alabama, violation of numerous ordinances and statutes of the City of Birmingham and State of Alabama;" (7) that the conduct alleged

was "calculated to provoke breaches of the peace in the City of Birmingham" and that such conduct "threatens the safety, peace and tranquility of the City of Birmingham" and further that this conduct had already caused serious breaches of the peace and violations of law and that the named respondents, some of these petitioners included, threatened to continue to commit further breaches of the peace and violations of law unless enjoined therefrom; (8) specific instances of unlawful conduct set forth in paragraphs 4(a) through 4(c); (9) that the acts and conduct of the respondents including petitioners here placed an undue burden and strain on the Birmingham police force and was likely to cause injuries or loss of life to police officers and damage to property owned by the City in the operation of its Police Department; (10) that respondents, including petitioners here, and others acting in concert whose names and addresses are not known will continue to enter into the City of Birmingham and threaten "the lives, safety, peace, tranquility and general welfare of the people of the City of Birmingham" and "that the tension will continue to mount as such activities are continued;" that respondents, including some of petitioners herein, and others acting in concert "will continue to conspire to engage in unlawful acts and conduct" unless enjoined; (12) [fol. 9] that "kneel-in" demonstrations at various churches in the City of Birmingham "in violation of the wishes and desires of said churches" would occur unless enjoined; (13) that its remedy at law was inadequate and "that complainant has no other adequate remedy to prevent irreparable injury to persons and property in the City of Birmingham, Jefferson County."

The City then prayed in its bill of complaint for a temporary injunction enjoining and restraining petitioners: "from continuing any acts hereinabove designated, particularly: engaging in, sponsoring, inciting or encouraging mass street parades or mass processions, or like demonstrations without a permit, trespasses on private property after being warned to leave the premises by the owners or per-

son in possession of said private property, congregating on the streets or public places into mobs, and unlawfully picketing business establishments or public buildings in the City of Birmingham, Jefferson County, State of Alabama, or performing acts calculated to cause breaches of the peace in the City of Birmingham, Jefferson County and the State of Alabama, or from conspiring to engage in unlawful street parades, unlawful processions, unlawful demonstrations, unlawful boycotts, unlawful trespasses and unlawful picketing or other like unlawful conducts or from violating the ordinances of the City of Birmingham and the statutes of the State of Alabama, or from doing any acts designed to consummate conspiracies to engage in said unlawful acts of parading, demonstrating, boycotting, trespassing and picketing or other unlawful acts or from engaging in acts and conduct customarily known as "Kneel In's" in churches in violation of the wishes and desires of said churches . . . " The complaint also prayed for a permanent injunction after a final hearing, the appointment of a guardian ad litem for minor respondents and "other, further, or general relief." The bill of complaint is attached hereto as an exhibit (p. I).

On April 10, 1963, the day on which the bill of complaint was filed, the court below issued, without prior notice to the petitioners-respondents and without opportunity for them to be heard, a temporary injunction as prayed. Said injunction is attached hereto as an exhibit (p. II). The [fol 10] injunction restrained petitioners-respondents from:

. . . engaging in, sponsoring, inciting or encouraging mass street parades or mass processions or like demonstrations without a permit, trespass (sic) on private property after being warned to leave the premises by the owner or person in possession of said private property, congregating on the street or public places into mobs, and unlawfully picketing business establishments or public buildings in the City of Birmingham, Jeffer-

son County, State of Alabama or performing acts calculated to cause breaches of the peace in the City of Birmingham, Jefferson County, in the State of Alabama or from conspiring to engage in unlawful street parades, unlawful processions, unlawful demonstrations, unlawful boycotts, unlawful tresspasses (sic), and unlawful picketing or other like unlawful conduct or from violating the ordinances of the City of Birmingham and the Statutes of the State of Alabama or from doing any acts designed to consummate (sic) conspiracies to engage in said unlawful acts of parading, demonstrating, boycotting, trespassing (sic) and picketing or other unlawful acts, or from engaging in acts and conduct customarily known as "kneel-ins" in said churches in violation of the wishes and desires of said churches.

Petitioners aver that said order and judgment are null and void and beyond the jurisdiction of the court below in that it seeks to exert authority not permitted under the decisions of this Court and which deny petitioners' rights secured by the First and Fourteenth Amendments to the Constitution of the United States.

On April 15, 1963, petitioners filed a motion to dissolve the temporary injunction. Hearing on the motion to dissolve was set for April 22, 1963.

On the same date, April 15, 1963, the City of Birmingham filed in the court below its petition for an order and rule to show cause. Said petition named as respondents thereto: Wyatt Tee Walker, Ralph Abernathy, James Bevels, T. L. Fisher, Andrew Young, F. L. Shuttlesworth, Calvin Woods, Martin Luther King, Jr., Abraham Woods, Jr., Johnny Louis Palmer, J. W. Hayes, Ed Gardner, A. D. King, John Thomas Porter and N. H. Smith, Jr. All except Ed Gardner, Calvin Woods, Abraham Woods, Jr., and Johnny Louis Palmer are petitioners herein. Said petition averred: (1) that on April 10, 1963, a bill of complaint was filed naming each of the parties respondent except Ed Gardner, J. W.

Hayes, James Bevels, Andrew Young and T. L. Fisher; (2) that the temporary injunction referred to above was issued on April 10, 1963 (setting forth its terms); that service of the writ of injunction was made upon Wyatt Tee Walker, Ralph Abernathy, F. L. Shuttlesworth, Martin Luther King, Jr., A. D. King, Abraham Woods, Jr., and Calvin Woods on either the night of April 10 or morning of April 11, 1963 and that matters thereafter alleged as [fol. 11] having been done by petitioners-respondents were done subsequent to service of the injunction and as to those not served, with knowledge of its issuance; (4) that on April 11, 1963, certain of respondents held a press conference at which they announced their intention not to comply with the injunction; (5) that on April 11, 12, 13, 1963, some of the petitioners participated in various meetings at which they announced their intention to violate the injunction and/or urged other persons to do so; (6) that various acts of defiance and violation of the injunction occurred in which one or more of the petitioners engaged (set forth in paragraphs 10A, B, C, D and 11); (7) that the acts and statements as alleged constituted an intentional violation of the injunction and contempt of court which would continue until the statements made were publicly retracted by those petitioners who made them. The petition for injunction then prayed the issuance of a rule nisi to each of the petitioners herein to show cause why they should not be punished for contempt and as to petitioners-respondents, Wyatt Tee Walker, Ralph Abernathy, F. L. Shuttlesworth and Martin Luther King, Jr., why they should not continue to be adjudged in contempt and from time to time punished therefor unless they publicly retracted statements attributed to them at the press conference and mass meeting of April 11, 1963. (Said petition for rule nisi is attached as Exhibit III.)

On the said April 15, 1963, the court below issued its Order And Rule to Show Cause to these petitioners ordering them to appear in the Jefferson County Courthouse in the City of Birmingham on April 22, 1963 at 9:30 A.M.

(the same time at which the hearing on petitioners' motion to dissolve previously filed had been set) to show cause why they should not be punished for contempt as prayed (Order and Rule To Show Cause is Exhibit IV hereto).

Petitioners herein then filed their answer and demurrer to the bill of complaint on April 19, 1963. The answer generally consisted of denials of the allegation of the complaint with affirmative averments that petitioners' conduct was that of peaceful protest against racial segregation. [fol. 12] The demurrer attacked the equity of the bill, asserted that complainants' remedy at law was adequate, denied the existence of irreparable injury and that the injunction was in contravention of rights protected under the First and Fourteenth Amendments to the Constitution of the United States.

The City of Birmingham on April 18, 1963, amended its petition for rule nisi to add additional parties-respondent and to cite further instances of alleged violations of the injunction. The prayer of the original petition for rule nisi was amended to add these additional parties and to require them to appear before the court simultaneously with the respondents previously named (some of whom are petitioners here) in order to show cause why they too should not be cited for contempt. On the following day, April 19, 1963, the court below issued its order allowing the amendment.

The cause then came on to be heard on the order and rule to show cause on April 22, 1963. At the beginning of the contempt hearing, petitioners-respondents filed with the court below the following pleadings:

(1) Amended Answer to the bill of complaint setting forth additional affirmative defenses.

(2) Amended answer to the bill of complaint containing a verification of the answer.

(3) Plea in Abatement of the action against the Alabama Christian Movement For Human Rights and the Southern Christian Leadership Conference (Exhibit V).

(4) Motion to Vacate and Discharge Order and Rule to Show Cause on grounds *inter alia* that the injunctive order prohibited unlawful conduct whereas the conduct of petitioners was lawful conduct protected by the First and Fourteenth Amendments to the Constitution of the United States and by Article I, Section 25, of the Constitution of the State of Alabama. (Exhibit VI).

(5) Motion for Severance of the trial of the charges of criminal and civil contempt. (Exhibit VII).

(6) Answer to the Petition and Amended Petition to the Order and Rule to Show Cause consisting of a general denial of the allegations of both pleadings and an affirmative defense that the activities engaged in by petitioners was lawful activity protected by the above provisions of the federal and state constitutions (Exhibit VIII).

The court below disallowed the plea in abatement on the ground that it had been waived by petitioners having previously filed an answer, demurrer and motion to dissolve (T. 2). The motion to vacate and discharge the rule and order to show cause was also denied (T. 3). Petitioners aver that said denial was a violation of rights secured to them by the First Amendment and by the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States and the denial of said motion constituted reversible error. The motion for severance was also denied (T. 3).

In addition, petitioners moved orally at the commencement of the hearing that the motion to dissolve which had been filed before the petition for order and rule to show cause and which had been set down for hearing at this time, be heard before the hearing on the order to show cause. This motion was also denied (T. 2).

At the hearing the city produced the following witnesses who, in substance, testified as follows:

1. W. J. Haley; Chief Inspector of the Birmingham Police Department, who testified that on Good Friday, April

12, 1963, petitioners Martin Luther King, Jr., and Ralph D. Abernathy were arrested with approximately fifty other persons while leading a march to either the City Hall or city jail (T. 8-10). He also testified that on Easter Sunday, April 14, some twenty additional persons were arrested while taking part in a similar procession (T. 13). Inspector Haley was able to identify petitioner A. D. King as one of those who led this march (T. 12). He also testified that two unidentified men, who were not demonstrators, were arrested for throwing rocks and that three or four other pieces of mortar were thrown by unidentified persons (T. 14). On neither occasion did these petitioners or those in participation with them violate any traffic signals or obstruct any pedestrian traffic (T. 23). Inspector Haley testified that the police had blocked off certain streets and diverted vehicular traffic, but that the police had allowed crowds of curious onlookers to gather outside the churches from which the marchers originated without making any [fol. 14] attempt to disperse them (T. 23-25). He also testified that the Police Department, unaided by outside officials, was able to maintain law and order on each occasion (T. 45).

2. J. Walter Johnson, Jr., a reporter for the Associated Press, who testified that he attended a news conference on Thursday afternoon, April 11, 1963, at which petitioners Martin Luther King, Jr., Ralph D. Abernathy and F. L. Shuttlesworth were present (T. 48-49). He also testified that he attended a meeting held at one of the Negro churches on the night of April 11 and that petitioners Ralph D. Abernathy and Martin Luther King, Jr., addressed the meeting (T. 51). Referring to his notes, the witness quoted Reverend Abernathy as saying, "If you have to use the rest room, be a first-class citizen, go where Bull goes. I want to see it anyway" (T. 51). Petitioner King was quoted as advocating a boycott of all stores until the walls of segregation crumbled (T. 51-52). The witness quoted petitioner King as saying, "We must love all white persons. We must love even Bull Connor" (T. 53).

Petitioner Shuttlesworth was quoted as saying of the injunction that, "This is a flagrant denial of our constitutional privileges" (T. 56). The witness also testified that petitioner Shuttlesworth stated that the injunction was being "used to misuse certain constitutional privileges that will never be trampled on by an injunction" (T. 56) and that petitioner Abernathy said that "an injunction nor anything else will stop the Negro from obtaining citizenship in his march for freedom" (T. 57).

Mr. Johnson testified also that he attended the mass meeting on Friday night, April 12 and he was able to identify the petitioner James Bevel, petitioner Wyatt Tee Walker and petitioner Andrew Young (T. 62). He quoted by reference to his notes certain statements made by the above-named petitioners on that occasion. He quoted petitioner Bevel as saying, among other things, that, "The Negroes don't have to worry about doing anything. Just leave the white people alone and white people will always do something foolish . . . the Negro can only free himself, whites can't do it because whites don't owe Negroes freedom." Also, "Locking up the leaders of this movement won't do any good; they [the Birmingham Police Dep't] don't have [fol. 15] sense enough to know that God is the leader" (T. 63). He testified that the petitioner, Wyatt Tee Walker, called for a meeting of students on Saturday, April 13, and stated that the Negro students of Birmingham could get a "better education in five days in this jail than in five months in these segregated schools" (T. 64).

3. Willie B. Painter, an investigator with the Alabama Department of Public Safety, who identified petitioners Walker and King as officers in the Southern Christian Leadership Conference and petitioner Shuttlesworth as the President of the Alabama Christian Movement for Human Rights (T. 67). He said that the Alabama Christian Movement for Human Rights is an affiliate of the Southern Christian Leadership Conference (T. 67).

Lt. Painter testified as to the Good Friday and Easter Sunday marches. As to the Good Friday march, he testified

that around noon he observed a crowd gathering outside a church and a short time thereafter a group of persons emerged from the church led by petitioners King, Abernathy, Shuttlesworth and the Reverend Bernard Lee and that the group marched away in the direction of downtown Birmingham, followed by a group of over a hundred persons who had assembled along the sidewalk and in the street (T. 69). He described the route of the march and the moment that the leaders of the group were stopped by the Birmingham police and a number of persons placed under arrest (T. 70). He testified that a short time after the arrest he observed petitioner Wyatt Tee Walker urging a group of persons to make a circle around the block (T. 71).

The witness related the substance of a conversation with petitioner Walker that occurred on the following night. According to his testimony, petitioner Walker produced several white three-by-five cards upon which were recorded the results of observations in five downtown retail stores of the number of Negro people who were shopping therein. After producing these cards, said petitioner indicated to the witness that the boycott was successful (T. 72). Then ensued conversation concerning the possibility of danger to the movement in the event that members of the Black Muslims should enter and create violence. Petitioner Walker replied that that was a calculated risk, but that the philosophy of the Muslim group was so different from the philosophy of SCLC and ACMHR that there could not [fol. 16] be any collaboration with this movement (T. 72-73). The witness further testified that in the course of this conversation, Reverend Walker calculated that approximately two percent of the Negro people in the State of Alabama were active in or affiliated with the Southern Christian Leadership Conference and that this two percent of the population was sufficient to create a revolution (T. 74-75). The witness quoted Reverend Walker as saying on that occasion that if the movement "did not obtain the things that we are seeking, then we will follow the course of revolution to obtain those things" (T. 75).

The witness then testified concerning the Easter Sunday march. He testified that at approximately 2:30 or 3:00 o'clock in the afternoon he was stationed outside a church located at Seventh Avenue and 11th Street in the City of Birmingham and that while so stationed he observed the petitioner Wyatt Tee Walker approach a group of persons who were standing on the sidewalk diagonally across from the church and forming a group of persons two or three abreast (T. 77). Immediately afterward, the witness approached petitioner Walker and inquired as to what was planned for that afternoon, said that his interest in making the inquiry was in the controlling of the group and in law enforcement, whereupon the witness quoted petitioner Walker as saying, "If you control yourself and the police as well as I can control this crowd, there won't be any problem. I guarantee you I can control these people." (T. 78) The witness then testified that soon after a group came out of the church through a side door and began walking along the sidewalk and almost simultaneously the crowd of people that were gathered outside the church began moving along with them. Two blocks away from the church, the police had set up a blockade to stop the group so that a short distance away from the intersection where the blockade was set up those who were leading the march turned through an alley in order to avoid the blockade (T. 78). The witness at this point went ahead of the group, to a distance of about a half block and then returned to the corner where the blockade had been set up and there again met petitioner Wyatt Tee Walker and stated to him that, "If you are not careful you are going to get someone hurt." Whereupon, the witness quoted the petitioner as replying, "If anyone is hurt, they will be injured or hurt by your people, the police, but not by our people" (T. 78-79). The witness then testified that during the course of [fol. 17] the afternoon he saw at least on two occasions brick objects being thrown (T. 79). The only person among these petitioners that the witness identified as participating

in the Easter Sunday march was petitioner A. D. King (T. 80).

On cross-examination, the witness characterized SCLC and ACMHR as essentially protest organizations whose purposes are to gain civil rights for the Negro and integration. The teachings of these organizations was characterized by the witness as non-violent though the witness felt that the methods used have incited others to violence (T. 82-83). The witness further indicated on cross-examination that: "The general theme is non-violence in every program" (T. 84).

When cross-examined as to the Good Friday march and the events surrounding it, the witness testified that there were a number of uniformed officers present in the vicinity of the church from which the march originated (T. 75); that a crowd of persons notwithstanding this number of officers was allowed to congregate in the vicinity of the church to the extent of 700 to 1,000 persons and that the police kept the sidewalks and streets clear in spite of this number of persons (T. 87). He testified that as the group emerged from the church and began the march the crowd surged in behind them so that it was hard to distinguish those persons who were marching and those persons in the crowd (T. 88). On Easter Sunday, according to the testimony, there were a number of police motor vehicles in the vicinity of the church in which the march originated (T. 90). The number of policemen on this occasion was estimated by the witness to be a "rather large number" larger than the number that was present on Good Friday (T. 91). On this occasion, as on Good Friday, the crowd was permitted to congregate. The witness testified that on both occasions the march began on the sidewalk (T. 92).

4. James Ware, photographer with the Birmingham Post-Herald, who testified that on Easter Sunday, while taking photographs of the march, he was standing behind a three-wheeler when a rock hit the three-wheeler; that as he started to move he was hit on the back of the head with a rock (T. 95) and that in his judgment the crowd ap-

peared to be unruly (T. 96). The witness estimated that the number of persons that took part in the march were fifty (T. 98) and identified only petitioner Wyatt Tee Walker and petitioner A. D. King as being on the scene [fol. 18] that day (T. 97, 100).

5. Elvin Stanton, News Director for WSGN radio, a local Birmingham station which uses UPI Wire Service. Stanton testified that he attended the mass meeting held on the evening of April 11. He identified petitioners Martin Luther King, Jr., Ralph Abernathy and Andrew Young as being present at that meeting (T. 105). Referring to notes made on that occasion he quoted petitioner King as saying, "Injunction or no injunction we are going to march tomorrow" (T. 107). He also quoted petitioner King as saying "in our Movement here in Birmingham we have reached the point of no return" (T. 107). He further quoted M. L. King, Jr., as saying that, "Now Mr. Connor will know that the injunction can't stop us" (T. 108).

By reference to his notes, the witness quoted petitioner Ralph Abernathy as saying that he felt good because he was going to jail tomorrow (T. 108). He also recalled that petitioner Abernathy made a call for volunteers (T. 109).

6. Maurice Herman House, a Lieutenant of the Birmingham Police Department who testified that he attended a press conference on the afternoon of April 11th at which petitioners Shuttlesworth, M. L. King, Jr., A. D. King, Ralph Abernathy and Wyatt Walker were present. The witness testified that the petitioner M. L. King, Jr., read a prepared press release which was identified as complainant's Exhibit 2 (T. 113) and received in evidence (T. 114). The witness then testified that the petitioner, F. L. Shuttlesworth, read from a typed statement which in substance reaffirmed the matter contained in the press release previously given in evidence. After reading this statement, petitioner Shuttlesworth said that they had respect for the federal courts or federal injunctions, but in the past state courts had favored local law enforcement

and "if the police couldn't handle it, the mob would" (T. 114-115). The witness testified that other statements were made on this occasion by some of these petitioners, to wit: petitioner Shuttlesworth was quoted as saying, "Damn the torpedoes, full speed ahead" (T. 115). Petitioner Abernathy was quoted as saying "give me liberty or give me death" (T. 115); petitioner M. L. King, Jr., was quoted as saying "the attorneys would attempt to dissolve the injunction but we will continue on, today, tomorrow, Saturday, Sunday, Monday and on" (T. 116).

[fol. 19] 7. Harry L. Jones, a Birmingham City Detective, who testified that he interviewed petitioners A. D. King, N. H. Smith, J. T. Porter and J. W. Hayes, in the City Jail on Easter Sunday after they had been arrested because of their participation in the Easter Sunday march. Each of them stated that they had knowledge of the issuance of the injunction (T. 120), but petitioner A. D. King said that he did not read it because it was too broad and vague (T. 121). Petitioner Porter indicated that he had been served with a copy of the injunction (T. 121) and petitioner Hayes indicated that even though he knew of the injunction he was marching in the face of it because "he was doing it for human dignity" (T. 122).

Detective Jones was present when the march began (T. 122) and testified that though there were several hundred in the crowded streets the sidewalks were kept clear (T. 123). He estimated that there were approximately 200 people in the march, but only 15 or 20 actually emerged from the church to begin the march with petitioners Porter, Hayes, A. D. King and Smith leading the group from the church (T. 123-124).

8. R. N. Higginbotham, also a police officer of the City, testified that he arrested petitioners A. D. King, J. T. Porter, J. W. Hayes and N. H. Smith, Jr., on Easter Sunday (T. 130); that he could not distinguish the number that came out of the church nor tell how many of the crowd fell in behind (T. 131); that the traffic was blocked because

of the crowd spilling into the street and that though there were more than ten officers at the scene there was no dispersal of the crowd (T. 132-133). The four ministers, the above-named petitioners, were not loud or boisterous and they and the rest of those engaging in the march were walking in twos without uniforms and with no band playing (T. 133). They did not resist arrest (T. 134). No outside help was used (T. 135).

The City then rested its case, whereupon petitioners-respondents renewed each of the motions made at the beginning of the trial and they were again overruled (T. 137). In addition, petitioners-respondents moved to exclude the City's evidence on the ground that the activities in which they were involved were protected by the First and Fourteenth Amendments to the Constitution of the United States, more particularly, the rights of freedom of speech and assembly. The motion was made on the further ground that the City had failed to produce testimony or other evidence to sustain the charges and, therefore, under *Thompson v. Louisville*, 362 U. S. 199, the charges should be dismissed [fol. 20] missed. This motion was overruled (T. 137).

A motion to exclude the evidence and accordingly dismiss the charges against respondents Ed Gardner, Abraham Woods, Jr., Calvin Woods and Johnny Louis Palmer was granted (T. 139). A similar motion as to petitioners Andrew Young and James Bevel was overruled (T. 138, 139). A motion to exclude the evidence and discharge all the respondents on the ground of non-service of the injunction and contempt citation was overruled (T. 140). Petitioners aver that the overruling of these motions was in error and violated these petitioners' rights to due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States and their rights to freedom of speech, protest and assembly guaranteed by the First and Fourteenth Amendments to the United States Constitution, and by Article One, Section 25 of the Alabama Constitution.

Petitioners-respondents then put on their case. The following witnesses testified substantially as follows:

1. J. M. Breckenridge, Attorney for the City of Birmingham, testified that this suit was authorized by City Commissioners Eugene Connor and Arthur Hanes, after an informal discussion though no formal action was taken (T. 143). However, the issuance of the required bond for filing the suit was ratified by all three commissioners and that action was recorded (T. 144).

2. Judson Hodges, City Clerk of Birmingham, testified that there was no resolution authorizing commencement of the suit, but that there was a resolution authorizing the bond for filing the suit (T. 147). He further testified that the City Commission never referred any request by petitioners-respondents for a permit to hold a public demonstration within the past thirty days nor had any of the respondents actually appeared before the Commission (T. 152-153). The attempt to show through testimony that it is not the normal practice of the City Commission to require the issuance of permits for a parade, notwithstanding a city ordinance to this effect, was not allowed by the court. Therefore, petitioners-respondents, merely proffered this testimony (T. 153).

3. Eugene Connor, Public Safety Commissioner of the City of Birmingham, who identified respondents' Exhibit "A" (T. 155) which was a telegram requesting permission to conduct a demonstration on the public streets. Respondents also introduced into evidence a telegram sent by the [fol. 21] witness to petitioner F. L. Shuttlesworth, informing him that a permit had to be secured from the City Commission and stating: "I insist that you and your people do not start any picketing on the streets in Birmingham, Alabama." (T. 157).

4. Jamie Moore, Chief of Police of the City of Birmingham, testified that on the whole law and order was maintained during the various demonstrations and it was not

necessary to call in outside help from the State or Sheriff's office (T. 160).

5. Testimony of Mrs. Una Denny, Restaurant Manager of Britts Department Store, on the question of whether or not Negroes could be served at the lunch counter of the store was not allowed. Counsel for respondents sought to introduce this testimony to show that the conduct of petitioners was to protest illegal racial demonstrations and that said protest was constitutionally protected free speech (T. 162-163).

6. Petitioners T. L. Fisher, Nelson Henry Smith, Jr., James Bevel and J. W. Hayes, testified that they had never been served with a copy of the injunctive decree (T. 165-208).

7. W. J. Haley, Chief Inspector, recalled by respondents, testified that on both Good Friday and Easter Sunday, approximately 80 to 85 policemen were used in the immediate vicinity of the two demonstrations (T. 209); that there were approximately 51 persons arrested on Good Friday and some 20-odd persons arrested on Easter Sunday (T. 210). He testified that in his opinion the police had the necessary men at all times to control the crowd on these two occasions (T. 211).

8. N. H. Smith, Jr., one of petitioners herein, was recalled to the stand to clarify a portion of his testimony in response to a question as to whether or not he and other persons connected with the Alabama Christian Movement for Human Rights would seek to attain their goals by revolution. Respondent, "I do not know" (T. 185). The petitioner clarified his testimony by showing that he misunderstood the word "revolution" to mean "resolution" (T. 213).

9. Commissioner Eugene Connor recalled to the stand for the purpose of identifying respondents' Exhibits B and C, being telegrams received by him on behalf of the Alabama Christian Movement for Human Rights on April 5 and April 6, which telegrams purported to request per-

mission for demonstrations in protest of racial segregation (T. 214-220). Petitioners-respondents were not allowed [fol. 22] to question the witness as to whether he took up the matter of these requests with the City Commission (T. 219).

10. Lola Hendricks who testified that on April 3, 1963 she visited Commissioner Connor at his office in the City Hall for the purpose of seeking a permit to hold a public demonstration and the Commissioner denied the request and replied that he would picket her to the city jail. This testimony, however, was excluded by the court below (T. 221-224).

Petitioners-respondents then offered respondents' Exhibit D, a statement through counsel by petitioners Wyatt Walker, Ralph Abernathy, F. L. Shuttlesworth and Martin Luther King, Jr., in compliance with a condition set by the court in exoneration of these four of the charges of civil contempt. This statement was, however, ruled inadmissible by the court (T. 225). The statement which in substance sought to show to the court that petitioners were only exercising what they believed to be their constitutionally guaranteed rights was made a part of the record for purposes of taking an appeal (T. 226).

Respondents then rested with the exception of one other witness who had not yet arrived and in the interim complainants offered rebuttal testimony of James Ware who had been called earlier. He identified complainants' Exhibits 3, 4, 5 and 6 being photographs that were taken of the Easter Sunday demonstration (T. 228).

Respondents then recalled Chief Moore to the stand who identified the telegram marked as respondents' Exhibit C and this telegram was received in evidence (T. 232). Respondents' last witness was John S. Gant, Assistant Operations Manager for the Western Union Telegraph Company, who testified that the telegram marked as respondents' Exhibit C was transmitted on April 16, 1963 (T. 236) and that said telegram was delivered over the

desk-fax machine which is a facsimile machine which transmitted the telegram to the City Hall for further distribution by City Hall (T. 237-238).

The motion to exclude the evidence as to petitioner Andrew Young was then renewed by respondents and taken under submission by the court and those motions and all of respondents' motions made at the beginning of the case and at the close of the state's case were renewed and overruled (T. 243). Respondents' Motion to Exclude the Evidence was later filed in written form (Exhibit IX).

The cause was then argued by both complainants and [fol. 23] petitioners-respondents as to the law and the facts (T. 244-277) and the case was adjourned until Friday, April 26th at 9:30 A.M.

On April 26, 1963, the court below entered its decree adjudging the petitioners guilty of contempt:

"IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court as follows:

1. That motion of Defendants Ed Gardner, Calvin Woods, Abraham Woods, Jr., and Johnny Louis Palmer, to exclude the evidence as to said defendants and dismiss said defendants as to this petition be and the same is hereby granted;

~~2. That the motion of Defendant Andrew Young, to exclude the evidence as to him and to dismiss him as a defendant to the petition herein be and is hereby denied;~~

3. That the following defendants be and the same are hereby adjudged in contempt of this Court: Martin Luther King, Jr., Ralph Abernathy, A. D. King, Wyatt Tee Walker, Andrew Young, J. W. Hayes, N. H. Smith, Jr., James Bevels, T. L. Fisher and F. L. Shuttlesworth, and all of said defendants shall hereby stand committed to the custody of the Sheriff of Jefferson County, Alabama, for a period of five consecutive days beginning at 10 A. M. on Thursday, the 16th day of May, 1963;

4. That the said defendants as herein adjudged to be in contempt be and the same are also hereby fined the sum of Fifty (50) Dollars each and upon failure of any defendant to pay the said fine so imposed, the Sheriff of Jefferson County, Alabama, is ordered to retain the custody of such defendant and that said defendant, thereupon, perform hard labor for said county for said fine at the rate of Three (3) Dollars per day not to exceed twenty (20) days;

5. That the taxing of costs in this proceeding is hereby reserved until such time as a hearing has been held as to the amended petition to show cause.

DONE AND ORDERED, this the 26th day of April, 1963.

W. A. Jenkins, Circuit Judge, in Equity Sitting."

[fol. 24] Petitioners aver that the injunctive order and judgment is null and void and beyond the jurisdiction of the court in that there is no showing that the City of Birmingham, in lawful manner, was authorized to bring said suit. Petitioners further aver that the judgment of contempt entered herein denies rights secured by the First and Fourteenth Amendments to the Constitution of the United States in that said punishment enforcing said injunctive order constitutes a prior restraint on freedom of speech, association and the right to petition for redress of grievances.

Petitioners further aver that they could not obey said injunctive order because it is excessive, vague, contrary to the due process clause of the Fourteenth Amendment to the United States Constitution and that the only certain compliance they could have made with said order would have been to give up all expression of protest against racial segregation in the City of Birmingham, pending ultimate determination of said suit on the merits which could take many years. Petitioners submit that any order restraining First Amendment rights, if it must be obeyed

under pain of contempt, should be narrowly and precisely drawn so as not to unduly restrict said rights.

Petitioners further aver that the City of Birmingham failed to adduce evidence which showed that petitioners did anything other than exercise their constitutionally protected right of free expression. The decree of contempt, therefore, was based on no evidence of guilt in violation of the due process clause of the Fourteenth Amendment to the Constitution of the United States.

Petitioners aver that they have not engaged in unlawful conduct, but have only pursued lawful conduct protected by the Constitution and laws of the United States and the Constitution of Alabama. Full compliance with the order of the court would mean a sacrifice of basic constitutional rights. Petitioners have no other adequate remedy to seek review of the orders and judgment of the court below except by this petition.

Wherefore, your petitioners respectfully pray that this case be reviewed and determined by this Court or that your petitioners may have such other or further relief or remedy in the premises, as this Court may deem appropriate and that the said judgment of the said Circuit Court in said case and in every part thereof may be reversed by this Honorable Court.

Arthur D. Shores, 1527 Fifth Avenue, North Birmingham, Alabama, Attorney for Petitioners.

[fol. 25] Orzell Billingsley, Jr., 1630 Fourth Avenue North, Birmingham, Alabama.

Norman C. Anaker, Leroy Clark, Jack Greenberg, Constance Baker Motley, 10 Columbus Circle, New York 19, New York.

Attorneys for Petitioners-Respondents.

*Duly sworn to by Arthur D. Shores, jurat omitted in printing.*

Certificate of Service (omitted in printing).

[fol. 60]

## IN THE SUPREME COURT OF ALABAMA

[Title omitted]

## ISSUANCE OF WRIT AND SETTING OF BOND—May 15, 1963

Whereas, the following respondents, Wyatt Tee Walker, Martin Luther King, Jr., Ralph D. Abernathy, A. D. King, Andrew Young, J. W. Hayes, N. H. Smith, Jr., James Bevels, T. L. Fisher, F. L. Shuttlesworth, and J. T. Porter, in the above cause, did on May 13, 1963, file in this Court a Petition for Writ of Certiorari to the Circuit Court of Jefferson County, Alabama, In Equity, seeking a review of the decree of contempt entered in the above cause, and petitioners have suggested that a Writ of Certiorari issue to the Register of the Circuit Court of Jefferson County, Alabama, commanding and requiring him to make and certify to this Court a true and correct copy of the contempt proceedings in said Circuit Court, in the above cause, and

Whereas, the petitioners, in this Court, have filed for a stay of execution of the decree of contempt, in said Circuit Court, pending the hearing of said Petition for Certiorari filed in said cause, and

Whereas, The Supreme Court of Alabama did, on to-wit, May 15, 1963, enter an order granting said Petition for Certiorari to said Circuit Court returnable within thirty (30) days from this date, upon the execution of security for the costs of the certiorari proceedings and upon the petitioners and each of them entering into an appearance bond in the amount of \$1,000.00 each to be approved by the [fol. 61] Register of the 10th Judicial Circuit of Alabama.

Upon compliance with the above and foregoing conditions, the execution of the decree and sentence imposed in the contempt decree is hereby stayed until further notice of this Court.

Now, therefore, upon the petitioners, and each of them, making an appearance bond with good and sufficient surety or sureties, in the amount of \$1,000.00 each, to be approved by the Register of the 10th Judicial Circuit of Alabama, and upon filing security for the costs of appeal by Certiorari of these proceedings, you are commanded to make diligent search of the records and proceedings in your office, in the above cause, and certify, together with this writ, a full and complete transcript of said above named records and proceedings to our Supreme Court within thirty (30) days from this date.

[fol. 63]

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IN THE CIRCUIT COURT  
TENTH JUDICIAL CIRCUIT OF ALABAMA  
EQUITY DIVISION

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CITY OF BIRMINGHAM, a Municipal Corporation of the  
State of Alabama, Complainant,

vs.

WYATT TEE WALKER, MARTIN LUTHER KING, JR., RALPH D.  
ABERNATHY, A. D. KING, ANDREW YOUNG, J. W. HAYES,  
N. H. SMITH, JR., JAMES BEVELS, T. L. FISHER, F. L.  
SHUTTLESWORTH, J. T. PORTER, ET. AL., Respondents.

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RETURN ON WRIT OF CERTIORARI FILED IN THE SUPREME  
COURT OF ALABAMA CONSISTING OF PROCEEDINGS IN THE  
CIRCUIT COURT, TENTH JUDICIAL CIRCUIT OF ALABAMA,  
EQUITY DIVISION

[fol. 65]

IN THE CIRCUIT COURT FOR THE  
TENTH JUDICIAL CIRCUIT OF ALABAMA,  
IN EQUITY  
Case No. 130-173

CITY OF BIRMINGHAM, A Municipal Corporation of the  
State of Alabama, Complainant,

—VS—

WYATT TEE WALKER; RALPH ABERNATHY; AL HIBLER; F. L. SHUTTLESWORTH; MARTIN LUTHER KING, JR.; ABERHAM WOODS, JR.; CALVIN WOODS; A. D. KING; ALABAMA CHRISTIAN MOVEMENT FOR HUMAN RIGHTS; SOUTHERN CHRISTIAN LEADERSHIP CONFERENCES; THEODORE REED; T. K. NELSON; RICHARD PETERSON; EDW. HENDRICKS; WILLIE FLOYD CLANCY; JOHNNY LOUIS PALMER; ORA MAE WATKINS; LEROY ALLEN; MAJOR WARREN; HOWARD CRUIKSHANK; WILLIAM BOAZMAN; BERNARD BULLARD; MARY FRANCIS SMITH; EDW. MONTGOMERY; ELA MAE PEGUES; KATIE JEFFERSON; NORA TATE; HESTER CHEATHAM; PINKIE S. FRANKLIN; LUELLE GIENER; CLEOPATRA KENNEDY; N. H. SMITH, JR.; A. D. WILLIAMS KING; JOHN THOMAS PORTER; JEROME TAYLOR; DAVIE LEE HAWTHORNE; WILSON BROWN; HENRY CRESKEY; LOUISE DRAKE; JOE DIXSON; BETTY HILL; CLOVE SMITH; MARY ORANGE; JUANITA CURTIS; ANNIE B. PETERSON; SEGRIST HARRISON; MARY ODEN; WAUELYN HOLMES; JOHN GERMAN; MINNIE OLA PINICK; LUCILLE JACKSON; ANNIE PEARL AVERY; ANNIE GOODEN; SARAH CELLEN; MARGARETTE POWELL; MARGARET WILLIAMS; KATHLEEN MOORE; BENJAMIN DARDY; ROSIE LEE CRAIG; WALTER WADE LOCKETT; ADREW PALM; HATTIE PEARSON; RICHARD HARPER; BERTHA BURKETT; CHARLES BILLUPS; LETTIE WOODS; ALBERT PARANCO; ENNIS KNIGHT; CHARLIE PENN; SHERRILL MARCUS; OTIS SPEARMAN; BRADINE KING; CARTER GASTON; EDDIE UPSHAW; BEATRICE KING;

LINCOLN HENDRIX; DARNELL WALKER; EDITH BURPE; WILLIE STONE; ERNISTINE DIXON; PEGGY LUCAS; LEON RICE; ROBERT A. MILLER; SHIRLEY FEMBY; HENRY REESE; CAROLYN SMITH; WILLIAM SOUTHLAND; GENEVA JONES; MAMIE L. BROWN; JOHN HENNINGTON; JAMES ARMSTRONG; CARLTON REESE; DOROTHY BELL; MARY ROBINSON; CURTIS SANDERS; ROBERT LEE JACKSON; EZER STOVALL; FRANK JAS. JACKSON; WILLIAM B. MULLINS; MAMIE RUTH KING; ARTHA BARBARA CRAIG; REBECCA HARRIS; ANNIE AGGINGTON; MARIE M. PETTAWAY; MARY N. NELSON; ROBERT J. NORRIS; CARL KEITH, JR.; EMMA BRADFORD; ALEXANDER LIONEL BROWN; LESTER COBB, JR.; WILBERT CROCKEN; OZZO HOWELL; CAROL JACKSON; MARY ELLEN STATION; CLARENCE TOWNSEND; HENRY [fol. 66]

CRAWFORD; MEBEL DANNER; MAGGIE HAWKINS; MYRAETTE GRIFFIN; GWENDOLYN KING; MARY ALICE JONES; OTILIA PERRY; PAULA PRICE; ELLA RUFFIN; LUMMIE BOYD; ALICE J. HOLDER; MARGARET ASKEW; BESSIE MAE ABRAMS; JERRY DEAN GREEN; DAVE YOUNG; EDDIE HARRIS; MARY ROBINSON; ERNEST ENGLISH; MELVIN SHORT; ROBERT SEALS; J. L. MEADOWS; CHARLES GEORGE; CARDA C. GRAY; TOMMY HOLT; JULIUS MINNIEFIELD; JOHN DOE and RICHARD ROE; X ASSOCIATION and Y CORPORATION; et al., Respondents.

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BILL FOR INJUNCTION—Filed April 10, 1963

To Any of the Honorable Judges of Said Court, in Equity Sitting:

Comes the City of Birmingham, a municipal corporation organized under and by virtue of the laws of the State of Alabama, and avers as follows:

1. Complainant is a municipal corporation organized and existing under the laws of the State of Alabama.

2. Respondents Wyatt Tee Walker, Ralph Abernathy and Martin Luther King are non-residents of the State of Alabama and reside in the State of Georgia; respondent

Al Hibler is a resident of the State of Alabama, residing at the Smith & Gaston Motel, Birmingham, Jefferson County, Alabama; F. L. Shuttlesworth is a non-resident of the State of Alabama and resides in Cincinnati, Ohio, and who formerly resided in the State of Alabama at 3164 29th Avenue North, Birmingham, Jefferson County, Alabama; respondent Carl Keith, Jr., who is a non-resident of the State of Alabama, and resides at 2031 Grant Street, Evanston, Illinois; the following respondents reside in Jefferson County, Alabama, and their names and resident addresses are as follows:

Rev. Aberham Woods, Jr.—125 Kappa Avenue South—B'ham, Ala.

Calvin Woods—1240 3rd Street North—B'ham, Ala.

Theodore Reed—1001 North 23rd Street—B'ham, Ala.

T. K. Nelson—1656 19th Street SW—B'ham, Ala.

Richard Peterson—313 Division Ave. SW—B'ham, Ala.

Edw. Hendricks—508 North 11th Street—B'ham, Ala.

Willie Floyd Clancy—338 Iota Ave. South—B'ham, Ala.

Johnny Louis Palmer—237 South 8th Avenue—B'ham, Ala.

Ora Mae Watkins—16 South 7th Avenue—B'ham, Ala.

Leroy Allen—1002 North 30th Street—B'ham, Ala.

Major Warren, Jr.—921 North 13th Place—B'ham, Ala.

Howard Cruikshank—124 4th Avenue SW—B'ham, Ala.

William Boazman—105 North 9th Court—B'ham, Ala.

Bernard Bullard—1620½ 4th Avenue North—B'ham, Ala.

[fol. 67] Mary Francis Smith—1226 North 11th Avenue—B'ham, Ala.

Edw. Montgomery—1103 North 8th Avenue—B'ham, Ala.

Ela Mae Pegues—1700 South 27th Avenue—B'ham, Ala.

Katie Jefferson—25 6th Avenue SW—B'ham, Ala.

Nora Tate—1223 North 16th Street—B'ham, Ala.

Hester Cheatham—1608 North 6th Street—B'ham, Ala.

Pinkie S. Franklin—4329 Huntsville Road—B'ham, Ala.

Luella Giener—432 Kappa Avenue—B'ham, Ala.

Cleopatra Kennedy—1814 North 22nd Avenue—B'ham, Ala.

N. H. Smith, Jr.—1700 South 1st Street—B'ham, Ala.

A. D. Williams King—721 12th Street, Ensley—B'ham, Ala.

John Thomas Porter—1531 South 6th Avenue—B'ham, Ala.

Jerome Taylor—345 Iota Avenue—B'ham, Ala.

David Lee Hawthorne—309 South 3rd Street—B'ham, Ala.

Wilson Brown—6325 North 35th Avenue—B'ham, Ala.

Henry Creskey—1933 7th Street North—B'ham, Ala.

Louise Drake—3320 33rd Street North—B'ham, Ala.

Joe Dixon—5220 Court G, Fairfield—B'ham, Ala.

Betty Hill—1105 12th Place, Ensley—B'ham, Ala.

Clove Smith—1719 20th Avenue North—B'ham, Ala.

Mary Orange—550 64th Place South—B'ham, Ala.

Juanita Curtis—5408 Court H, Vinesville—B'ham, Ala.

Annie B. Peterson—New Castle, Ala.

Segrist Harrison—Wenona Road, Box 484—B'ham, Ala.

Mary Oden—1217 93rd Place North—B'ham, Ala.

Wauelyn Holmes—4 11th Court West—B'ham, Ala.

John Germany—530 53rd Street, Fairfield—B'ham, Ala.

Minnie Ola Pinick—1246 Avenue H, Ensley—B'ham, Ala.

Lucille Jackson—2305 8th Avenue South—B'ham, Ala.

Annie Pearl Avery—525 1st Street West—B'ham, Ala.

Annie Gooden—Route 10, Box 484—B'ham, Ala.

Sarah Cellen—1753-A 13th Court South—B'ham, Ala.

Margarette Powell—Route 6, Box 572—B'ham, Ala.

Margaret Williams—2307 8th Avenue South—B'ham, Ala.

Kathleen Moore—23 11th Avenue North—B'ham, Ala.

Benjamin Dardy—922 13th Street North—B'ham, Ala.

Rosie Lee Craig—1820 Henngetta Drive—B'ham, Ala.

Walter Wade Lockett—521 8th Place SW—B'ham, Ala.

[fol. 68] Adrew Palm—1108 Jersey Street—B'ham, Ala.

Hattie Pearson—2001 18th Street North—B'ham, Ala.

Richard Harper—1217 Avenue L, Ensley—B'ham, Ala.

Bertha Burkett—218 14th Court North—B'ham, Ala.

Charles Billups—3516 64th Place North—B'ham, Ala.

Lettie Woods—1138 6th Street West—B'ham, Ala.

- Albert Paranco—321 54th Street, Fairfield—B'ham, Ala.  
 Ennis Knight—2232 Carles Avenue South—B'ham, Ala.  
 Charlie Penn—719 11th Street North—B'ham, Ala.  
 Sherrill Marcus—127 Morris Avenue—B'ham, Ala.  
 Otis Spearman—608 Avenue D—B'ham, Ala.  
 Bradine King—6332 36th Avenue North—B'ham, Ala.  
 Carter Gaston, Jr.—3233 31st Avenue North—B'ham,  
 Ala.  
 Eddie Upshaw—846-B Lomb Avenue—B'ham, Ala.  
 Beatrice King—1112 5th Avenue North—B'ham, Ala.  
 Lincoln Hendrix—2504 16th Street North—B'ham, Ala.  
 Darnell Walker—522 Alpha Street South—B'ham, Ala.  
 Edith Burpe—1619 Goldwire Street SW—B'ham, Ala.  
 Willie Stone—1134 Apt. A 11th Avenue North—B'ham,  
 Ala.  
 Ernestine Dixon—2308 8th Avenue South—B'ham, Ala.  
 Peggy Lucas—Route 8, Box 265—B'ham, Ala.  
 Leon Rice—916 3rd Street West—B'ham, Ala.  
 Robert A. Miller—544 55th Street, Fairfield—B'ham,  
 Ala.  
 Shirley Femby—Route 8, Box 265—B'ham, Ala.  
 Rev. Aberham Woods, Jr.—125 Kappa Avenue South—  
 B'ham, Ala.  
 Henry Reese—General Delivery—Dolomite, Ala.  
 Carolyn Smith—1400 Escambia Street—B'ham, Ala.  
 William Southland—3320 33rd Place North—B'ham,  
 Ala.  
 Geneva Jones—5604 Court H—B'ham, Ala.  
 Mamie L. Brown—1532 Tombigbee Street—B'ham, Ala.  
 John Hennington—3132 34th Terrace North—B'ham,  
 Ala.  
 James Armstrong—227 9th Court West—B'ham, Ala.  
 Carlton Reese—Route 8, Box 95—B'ham, Ala.  
 Dorothy Bell—5407 Avenue G, Fairfield—B'ham, Ala.  
 Mary Robinson—5617 Court G, Fairfield—B'ham, Ala.  
 Calvin Wood—1240 3rd Street North—B'ham, Ala.  
 Curtis Sanders—507 Columbus Avenue, Bessemer, Ala.  
 [fol. 69] Robert Lee Jackson—432 Mulga Road, Ensley—  
 B'ham, Ala.  
 Ezer Stovall—1108 22nd Street, Ensley—B'ham, Ala.

Frank James Jackson—432 Mulga Road, Ensley—B'ham, Ala.

William B. Mullins—1520 1st Court West—B'ham, Ala.

Mamie Ruth King—931 Avenue W, Pratt City—B'ham, Ala.

Artha Barbara Craig—3920 Morgan Avenue, Brighton—B'ham, Ala.

Rebecca Harris—420 Millville Street, B'ham, Ala.

Annie Aggington—1001 Avenue K, Pratt City—B'ham, Ala.

Henry Crawford—6415 Washington Blvd.—B'ham, Ala.

Mabel Danner—5906 3rd Avenue North—B'ham, Ala.

Maggie Hawkins—Docena, Ala.

Myraette Griffin—5206 Avenue G—B'ham, Ala.

Gwendolyn King—1512 23rd Street SW—B'ham, Ala.

Mary Alice Jones—1609 9th Alley North—B'ham, Ala.

Otilia Perry—253 Glory Road—B'ham, Ala.

Paula Price—2517 College Street SW—B'ham, Ala.

Ella Ruffin—Route 10, Box 623—B'ham, Ala.

Lummie Boyd—2020 Snavely Avenue SW—B'ham, Ala.

Alice J. Holder—3109 45th Avenue North—B'ham, Ala.

Margaret Askew—915 22nd Street South—B'ham, Ala.

Bessie Mae Abrams—4514 8th Terrace North—B'ham, Ala.

Jerry Dean Green—312 6th Avenue North—B'ham, Ala.

Dave Young—Route 10, Box 1436—B'ham, Ala.

Eddie Harris—1514 7th Avenue North—B'ham, Ala.

Mary Robinson—818 18th Way SW—B'ham, Ala.

Ernest English—124 Taft Court Way SW—B'ham, Ala.

Melvin Short—3525 67th Street North—B'ham, Ala.

Robert Seals—469 4th Street North—B'ham, Ala.

J. L. Meadows—7417 Madrid Avenue South—B'ham, Ala.

Charles George—1226 Avenue L, Ensley—B'ham, Ala.

Carda C. Gray—3533 Huntsville Road—B'ham, Ala.

Tommy Holt—2042 Ensley Avenue—B'ham, Ala.

Julius Minniefield—1113 Short Third Alley South—B'ham, Ala.

Marie M. Pettaway—320 2nd Terrace North—B'ham, Ala.

Mary N. Nelson—3109 33rd Street North—B'ham, Ala.  
 Robert J. Norris—109 15th Court North—B'ham, Ala.  
 Emma Bradford—1627 19th Street, Ensley—B'ham, Ala.  
 [fol. 70] Alexander Lionel Brown—1902 Ensley Avenue  
 —B'ham, Ala.  
 Lester Cobb, Jr.—37 Morris Avenue—B'ham, Ala.  
 Wilbêrt Crocken—280 9th Avenue North—B'ham, Ala.  
 Ozzo Howell—1120 Jersey Street—B'ham, Ala.  
 Carol Jackson—523 8th Street South—B'ham, Ala.  
 Mary Ellen Station—1029 Ninth Avenue North—B'ham,  
 Ala.

Clarence Townsend—1517 6th Avenue North—B'ham,  
 Ala.

Alabama Christian Movement for Human Rights is an un-  
 incorporated organization of which F. L. Shuttlesworth is  
 President; Southern Christian Leadership Conferences is  
 an unincorporated organization of which Martin Luther  
 King is President; all of respondents named herein are  
 over twenty-one (21) years of age except Richard Peterson,  
 Edward Hendricks, Willie Floyd Clancy, Leroy Allen,  
 Luella Giener, Cleopatra Kennedy, Jerome Taylor, Davie  
 Lee Hawthorne, Henry Creskey, Juanita Curtis, Wauelyn  
 Holmes, Minnie Ola Pinick, Annie Pearl Avery, Kathleen  
 Moore, Sherrill Marcus, Peggy Lucas, Robert A. Miller,  
 Carolyn Smith, William Southland, Geneva Jones, Doro-  
 thy Bell, Mary Robinson, Curtis Sanders, Robert Lee  
 Jackson, Frank James Jackson, Artha Barbara Craig, Re-  
 becca Harris, Annie Aggington, Gwendolyn King, Paula  
 Price, Ernest English, Robert Seals, Charles George,  
 Tommy Holt, Emma Bradford, Alexander Lionel Brown,  
 Ozzo Howell, Mary Ellen Station, all of whom are over  
 the age of fourteen (14) years.

3. Complainant avers that on or about, to-wit: April  
 3rd, 4th, 5th, 6th, 7th, 8th and 10th, 1963, and other dates  
 during the month of April, 1963, respondents sponsored  
 and/or participated in and/or conspired to commit and/or  
 to encourage and/or to participate in certain movements,  
 plans or projects commonly called "sit-in" demonstrations,  
 "kneel-in" demonstrations, mass street parades, trespasses

on private property after being warned to leave the premises by the owners of said property, congregating in mobs upon the public streets and other public places, unlawfully picketing private places of business in the City of Birmingham, Alabama; violation of numerous ordinances and statutes of the City of Birmingham and State of Alabama; that the said conduct, actions and conspiracies of the said respondents in the City of Birmingham is such conduct as is calculated to provoke breaches of the peace in the City of Birmingham; that such conduct, conspiracies and actions of said respondents as aforesaid threatens the safety, [fol. 71] peace and tranquility of the City of Birmingham. Such conduct, conspiracies and actions aforesaid have already caused or resulted in serious breaches of the peace and violations of and disregard and contempt for the law in numerous specific instances hereinafter set forth and complainant avers that said respondents, separately and severally, threaten to continue to sponsor, foment, encourage, incite, to be committed or to commit further breaches of the peace and acts and conduct which are in violation of and disregard for the law unless respondents are enjoined therefrom.

4. Specific instances of such unlawful conduct hereinafter referred to in the last preceding paragraph include among others the following:

(a) On, to-wit: the 3rd, 4th, 5th, and 6th of April, and subsequent thereto, respondents, separately and severally, invaded or caused to be invaded privately owned businesses in the City of Birmingham and particularly the lunch counters or other places in such private business establishments in which food is served to patrons and customers, said respondents remaining therein or thereupon after the owner or proprietor thereof requested them to move so as to force the closing of such counters or places in such private business establishments in which food is served; and in numerous instances invaded and trespassed upon the premises normally set apart for said use in disregard of signs and barriers erected to notify the public that such food serving establishments were closed to the public; and

in other instances remaining upon or in such premises in violation of City of Birmingham's Ordinance 1663-F and were arrested therefor.

(b) On Saturday, April 6, 1963, the said respondents, separately and severally, and in particular the said respondents, F. L. Shuttlesworth and Martin Luther King, Jr., did organize and conduct upon the public streets of the City of Birmingham a parade or procession without having procured a permit therefor and without having sought to procure from the City Commission of the City of Birmingham a permit therefor, but in knowing violation of the law after having been warned by the Commissioner of Public Safety of the City of Birmingham that such parade or procession, without a permit from the City of Birmingham, would be in violation of the ordinances of the said City of Birmingham.

[fol. 72] Respondents, separately and severally, did further unlawfully conduct or cause or participate in a parade or procession without a permit as required by City Ordinance upon the public streets of the City of Birmingham, on, to-wit: the 8th day of April, 1963, and again on the 10th day of April, 1963.

(c) On, to-wit: the 7th day of April, 1963, respondents, separately and severally, organized a parade or procession upon the streets of the City of Birmingham with the vowed and intended purpose of marching upon the City Hall and did further foster, encourage and cause a mob consisting of approximately 700 to 1,000 Negroes to congregate upon the public streets of the City of Birmingham, blocking and interfering with traffic, such mob having been gathered to encourage the said intended march on City Hall of the City of Birmingham from a point several blocks from said City Hall, which said mob became unruly, a number of such mob blocked the sidewalks of the City of Birmingham and a large number refused to obey the lawful orders of officers of the Police Department of the City of Birmingham in

their efforts to disperse said unruly mob. On said occasion, one man in said mob attacked a police dog of the City of Birmingham, a member of the Canine Corps, called into service for the purpose of aiding in the dispersal of said mob and another member of said mob brandished a knife at another of said police dogs, members of the Canine Corps.

Great throngs, including both white and colored were by said conduct caused to be congregated around the City Hall and in the vicinity thereto in connection with such proposed march upon City Hall, requiring the blocking off of several streets in the City of Birmingham in order to prevent breaches of the peace and violence, including mob violence.

5. Complainant avers that said acts and conduct of the said respondents as alleged hereinabove in paragraph 3 and 4 have placed an undue burden and strain upon the manpower of the Police Department of the City of Birmingham and are continuing to place an undue burden and strain upon the manpower of the Police Department of the City of Birmingham in the effort to provide for the safety of the respondents in their said conduct and activities upon the public streets and public places in said City and to provide for the safety and tranquility of the entire citizenship of the City of Birmingham; and complainant avers that [fol. 73] the said actions and conduct aforesaid are calculated to cause and if allowed to continue will likely cause injuries or loss of life to Police Officers of the City of Birmingham and have caused and will likely to continue to cause damage to property owned by the City of Birmingham in the operation of its Police Department and will continue to be an undue burden and strain upon said Police Department.

6. Your complainant is informed and believes and upon such information and belief avers that respondents, separately and severally, and others acting in concert with respondents, whose exact names and entities are otherwise unknown to your complainant at this time will continue to

enter into the City of Birmingham conducting themselves as above described, which will lead to further imminent danger to the lives, safety, peace, tranquility and general welfare of the people of the City of Birmingham, Jefferson County, and the State of Alabama, and that tension will continue to mount as such activities are continued.

7. Your complainant is informed and believes and upon such information and belief avers that there is strong and convincing reason to believe that respondents and others acting in concert with respondents, whose names are otherwise unknown to your complainant, have and will continue to conspire to engage in unlawful acts and conduct as aforesaid unless enjoined from so doing.

8. Complainant avers that while up to the present time no "kneel-in" demonstrations have been conducted, complainant is informed and believes and upon such information and belief, avers that the present acts and conduct of the respondents, hereinabove alleged, is a part of a massive effort by respondents and those allied or in sympathy with them to forcibly integrate all business establishments, churches, and other institutions of the City of Birmingham and that respondents, separately and severally, are conspiring to and will conduct "kneel-in" demonstrations at the various churches of the City of Birmingham in violation of the wishes and desires of said churches unless enjoined therefrom.

9. Complainant avers that its remedy by law is inadequate, that the continued and repeated acts of respondents, as herein alleged, will cause incidents of violence and blood-[fol. 74] shed; that complainant has no other adequate remedy to prevent irreparable injury to persons and property in the City of Birmingham, Jefferson County, and verily believes that such will occur if such respondents continue to so conduct themselves which they will do if not restrained by this Court.

Wherefore, the Premises Considered, your complainant prays that: (1) each person and association or other

respondent named in the caption hereinabove be made parties respondent hereto and that proper process issue to said respondents requiring them to plead, answer or demur hereto within the time required by law, or suffer decree pro confesso herein. (2) That this Court issue a temporary or peremptory injunction enjoining and restraining and prohibiting the above named respondents, their agents, members, employees, servants, followers, attorneys, successors, and all other persons in active concert or participation with the respondents, and all persons having notice of said order, from continuing any acts hereinabove designated, particularly: engaging in, sponsoring, inciting or encouraging mass street parades or mass processions, or like demonstrations without a permit, trespasses on private property after being warned to leave the premises by the owners or person in possession of said private property, congregating on the streets or public places into mobs, and unlawfully picketing business establishments or public buildings in the City of Birmingham, Jefferson County, State of Alabama, or performing acts calculated to cause breaches of the peace in the City of Birmingham, Jefferson County and the State of Alabama, or from conspiring to engage in unlawful street parades, unlawful processions, unlawful demonstrations, unlawful boycotts, unlawful trespasses and unlawful picketing or other like unlawful conduct or from violating the ordinances of the City of Birmingham and the statutes of the State of Alabama, or from doing any acts designed to consummate conspiracies to engage in said unlawful acts of parading, demonstrating, boycotting, trespassing and picketing or other unlawful acts or from engaging in acts and conduct customarily known as "Kneel In's" in churches in violation of the wishes and desires of said churches; (3) that upon a final hearing the Court will issue a permanent injunction in accordance with the foregoing prayer for a temporary or peremptory in-[fol. 75] junction; (4) that a guardian ad litem be appointed for such respondents that are minors; (5) that

your complainant prays for such other, further, or general relief to which it is entitled in the premises.

J. M. Breckenridge, Earl McBee, Solicitors for  
Complainants.

*Duly sworn to by Eugene "Bull" Connor and Jamie Moore, jurats omitted in printing.*

[fol. 76] I, E. R. Lindsey, Deputy Register in Chancery, do hereby certify that I have this date forwarded by first class mail, postage prepaid, a copy of the foregoing Bill and order together with copies of the Writ of Injunction and Decree appointing Guardian ad Litem, to Arthur D. Shores, Guardian ad Litem.

This the 11th day of April, 1963.

E. R. Lindsey, Deputy Register

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IN THE CIRCUIT COURT

TEMPORARY INJUNCTION—April 10, 1963

A verified Bill of Complaint in the above styled cause having been presented to me on this the 10th of April 1963 at 9:00 O'Clock P. M. in the City of Birmingham, Alabama.

Upon consideration of said verified Bill of Complaint and the affidavits of Captain G. V. Evans and Captain George Wall, and the public welfare, peace and safety requiring it, it is hereby considered, ordered, adjudged and decreed that a peremptory or a temporary writ of injunction be and the same is hereby issued in accordance with the prayer of said petition.

It is therefore ordered, adjudged and decreed by the Court that upon the complainant entering into a good and sufficient bond conditioned as provided by law, in the sum of Twenty five Hundred Dollars (\$2500.00), same to be approved by the Register of this Court that the Register

issue a peremptory or temporary writ of injunction that the respondents and the others identified in said Bill of Complaint, their agents, members, employees, servants, followers, attorneys, successors and all other persons in active concert or participation with the respondents and all persons having notice of said order from continuing any act hereinabove designated particularly: engaging in, sponsoring, inciting or encouraging mass street parades or mass processions or like demonstrations without a permit, trespass on private property after being warned to leave the premises by the owner or person in possession of said private property, congregating on the street or public places into mobs, and unlawfully picketing business establishments or public buildings in the City of Birmingham, Jefferson County, State of Alabama or performing acts calculated to cause breaches of the peace in the City [fol. 77] of Birmingham, Jefferson County, in the State of Alabama or from conspiring to engage in unlawful street parades, unlawful processions, unlawful demonstrations, unlawful boycotts, unlawful trespasses, and unlawful picketing or other like unlawful conduct or from violating the ordinances of the City of Birmingham and the Statutes of the State of Alabama or from doing any acts designed to consummate conspiracies to engage in said unlawful acts of parading, demonstrating, boycotting, trespassing and picketing or other unlawful acts, or from engaging in acts and conduct customarily known as "kneel-ins" in churches in violation of the wishes and desires of said churches.

W. A. Jenkins, Jr., As Circuit Judge of the Tenth  
Judicial Circuit of Alabama, In Equity Sitting.

Filed in Office April 10, 1963.

## AFFIDAVIT OF CAPTAIN G. V. EVANS

State of Alabama,  
Jefferson County:

Personally appeared before me, the undersigned authority in and for said County in said State, Captain G. V. Evans upon being by me first duly sworn, deposes and says:

I am Captain G. V. Evans, a Captain in the Police Department of the City of Birmingham. As a part of my duties as such member of the Police Department, I was present on the 3rd day of April, 1963 at Britts Department Store, at which time a number of the respondents to this cause were arrested for Trespass After Warning in connection with their effort to be served at the lunch counter of such store. I was also on this same date, April 3, in Woolworth's Store in the City of Birmingham at 3rd Avenue and 19th Street, at which time I saw a number of Negroes seated at the lunch counter of that store, but the lunch counter was closed when I went in the store. These Negroes remained seated during the normal lunch hours while the said counter was closed for a long period of time. I did not stay and was not present when they left, but I have been reliably informed they left after having remained at said counter for a period of probably two hours. On the same day I saw a group of Negroes in the tea room [fol. 78] of Loveman's Department Store at 3rd Avenue and 19th Street in the City of Birmingham. This tea room had also been closed when I arrived and the Negroes remained seated there. I was not on duty during any similar occasions on April 4th, 5th and 6th.

On Sunday afternoon, April 7, 1963, I was in the vicinity of St. Paul's Church, a Negro church at 6th Avenue and 15th Street, North, practically all afternoon. I observed a crowd of Negroes that grew larger and larger during the course of the afternoon. These Negroes were not in the church but were in the vicinity thereof. About 5:30 in the afternoon a group of Negroes numbering approximately

twenty came out of the church and began to march in a column Eastward on 6th Avenue. In the meantime the tremendous mob of Negroes numbering approximately 700 to 1000 began to move Eastward also. This mob of people began to yell and shout. In the 1700 Block of 6th Avenue North the column of marchers was stopped and placed under arrest for engaging in a parade or procession without having procured a permit as required by City Ordinance. In all other instances in which gatherings had occurred on previous days, the crowd had melted and dispersed. In this instance, however, the mob continued to stand upon and to block the public streets and to impede traffic thereupon. I had some other members of the Police Department working with me and we undertook to clear the streets, but were unable to do so. The mob continued to shout and to refuse to move. We had placed the Canine Corps on call. When we found that we could not control the mob without their assistance, we called them to the scene. The mob still refused to move until the police dogs came upon the scene. At that time some of them did move but others refused to move. One Negro attacked one of the dogs and was in turn thrown to the ground by the dog. In the mob of Negroes we heard voices indicating that the Police Department was at fault in the instance concerning the dog and obviously were attempting to work the Negroes up to the point that they would riot. We were compelled to place some of the Negroes under arrest for failing to obey the lawful order or command of a police officer in that they refused to move and to clear the sidewalk which was blocked by them, and eventually the mob did disperse.

On the 9th day of April, 1963, I was present at the [fol. 79] Bohemian Bakery and Restaurant at 1804 4th Avenue North. Nine Negroes entered the public establishment which is a cafeteria type restaurant. The manager informed them when they first came in the door that they could not be served in the cafeteria. They ignored her instructions to leave and proceeded to serve themselves from the food that was on the counter. They then went to

a table and proceeded to eat the food. During all of this time the manager was protesting that they could not be served and that they would have to leave the establishment. These nine Negroes were arrested for Trespass After Warning and also for Disorderly Conduct.

On April 10, 1963, I was present on two occasions when paraders or picketers carrying various signs paraded upon the public streets of the City of Birmingham in the vicinity of 19th Street between 4th and 5th Avenues North. These paraders numbered approximately 23. They also were arrested for parading or walking in a procession without a permit. In each instance where arrests have been made for parading without a permit large crowds of Negroes and whites have congregated upon the streets and sidewalks and have in each instance impeded the flow of pedestrian traffic upon the sidewalks and vehicular traffic in the streets. I was also present on the 9th day of April, 1963, when a number of Negroes paraded in the vicinity of Loveman's Department Store at 3rd Avenue and 19th Street North and were arrested for parading without a permit. In this instance also, large numbers of people gathered on the sidewalks and in the streets, including both Negroes and whites. The respondent Al Hibler, a blind Negro, was in the parade on April 9 and also one of those on April 10.

I have been a police officer for a period of twenty-five years and basing my opinion upon my experience for a period of twenty-five years in police work, if the activities and conduct of respondents in this case are not enjoined there is serious likelihood of bloodshed and violence resulting in possible death or serious injury to police officers of the City of Birmingham, members of the groups engaged in such conduct and other citizens and members of the public.

G. V. Evans, Captain G. V. Evans.

Sworn and Subscribed to Before Me This 10th Day of April, 1963.

[fol. 80]

Earl McBee, Notary Public.

Filed in Office April 10, 1963.

## AFFIDAVIT OF CAPTAIN GEORGE WALL

State of Alabama,  
Jefferson County:

My name is Captain George Wall. I am a Captain in the Police Department with the City of Birmingham. On Thursday, the 4th day of April, 1963, I was present at Lane Rexall Drug Store on 20th Street and 1st Avenue North, in the City of Birmingham, during an occasion when a group of Negroes were arrested for Trespass After Warning growing out of the invasion of such Negroes into and trespass upon a portion of the premises of the said Drug Store, wherein food is served. Such arrests were for Trespass After Warning when the trespassers refused to leave such portion of the premises upon the request or instruction of the man in charge. I noted a gathering of white men in the vicinity of the Drug Store at the time in question. This brought about a blocking of the sidewalk in the immediate vicinity of the Drug Store, as well as the door leading into such Drug Store.

On Saturday morning, April 6, 1963, a group of Negroes led by respondent F. L. Shuttlesworth and respondent Charles Billups paraded or marched in procession from the Gaston Motel eastward on 5th Avenue. The planned route of the procession or parade was known to the Police Department in advance thereof and we had blocked off 5th Avenue in the 1800th Block so as to isolate this group of people. They were warned several times that they were marching in a procession or parade without a permit as required by City ordinance and that such march or procession was therefore unlawful. They were requested on several occasions to disperse but refused to do so. They were then placed under arrest for parading or marching in procession without a permit. The number of Negroes involved in this particular unlawful activity were thirty-two. A large number of Negroes and whites congregated around 18th Street and 5th Avenue and blocked the sidewalk. It was necessary in order to keep the crowd from congregat-

[fol. 81] ing around the marchers to station officers at 18th Street and other intersections, westward toward the Motel.

George Wall, George Wall, Captain, Police Department, City of Birmingham.

Sworn to and Subscribed Before Me This 10th Day of April, 1963.

Earl McBee, Notary Public.

Filed in Office April 10, 1963.

[fol. 82]

IN THE CIRCUIT COURT

WRIT OF INJUNCTION AND RETURNS THEREON

To any Sheriff of the State of Alabama—Greetings:

We Command You, that without delay you execute this Writ, and make due return how you have executed the same, according to law.

O. H. Florence, Register.

To Wyatt Tee Walker; Ralph Abernathy; Al Hibler, F. L. Shuttlesworth; Martin Luther King, Jr.; Aberham Woods, Jr.; Calvin Woods; A. D. King; Alabama Christian Movement for Human Rights by serving copy on Fred L. Shuttlesworth as President, et al.

Whereas, City of Birmingham, a Municipal Corporation of the State of Alabama, has this day filed its Bill of Complaint in this said Circuit Court against Wyatt Tee Walker; Ralph Abernathy; Al Hibler; F. L. Shuttlesworth; Martin Luther King, Jr.; Aberham Woods, Jr.; Calvin Woods; A. D. King; Alabama Christian Movement for Human [fol. 83] Rights by serving copy on Fred L. Shuttlesworth as President, et al., praying among other things that this Court issue a temporary or peremptory injunction enjoining and restraining and prohibiting the respondents named

in the Bill of Complaint, their agents, members, employees, servants, followers, attorneys, successors, and all other persons in active concert or participation with the respondents, and all persons having notice of said order, from continuing any acts hereinabove designated, particularly: engaging in, sponsoring, inciting or encouraging mass street parades or mass processions, or like demonstrations without a permit; trespass on private property after being warned to leave the premises by the owners or person in possession of said private property, congregating on the streets or public places into mobs, and unlawfully picketing business establishments or public buildings in the City of Birmingham, Jefferson County, State of Alabama, or performing acts calculated to cause breaches of the peace in the City of Birmingham, Jefferson County, and the State of Alabama, or from conspiring to engage in unlawful street parades, unlawful processions, unlawful demonstrations, unlawful boycotts, unlawful trespasses and unlawful picketing or other like unlawful conduct or from violating the ordinances of the City of Birmingham and the statutes of the State of Alabama, or from doing any acts designed to consummate conspiracies to engage in said unlawful acts of parading, demonstrating, boycotting, trespassing and picketing or other unlawful acts or from engaging in acts and conduct customarily known as "Kneel In's" in churches in violation of the wishes and desires of said churches

And Whereas, on said Bill being exhibited to the Hon. W. A. Jenkins, Jr., one of the Judges of the Circuit Court, Tenth Judicial Circuit of Alabama, on the 10th day of April 1963 he did order, that, upon Complainant's entering into bond with sureties in the sum of (\$2,500.00) Twenty Five Hundred Dollars, and approved by the Register of this Court, payable and conditioned according to law, a Writ of Injunction issue out of this Court, according to the prayer of said bill:

And Whereas, Bond has been given as required by said Order,

These, Therefore, are to temporarily Enjoin you Wyatt Tee Walker; Ralph Abernathy; Al Hibler; F. L. Shuttlesworth [fol. 84] worth; Martin Luther King, Jr.; Aberham Woods, Jr.; Calvin Woods; A. D. King; Alabama Christian Movement for Human Rights by serving copy on Fred L. Shuttlesworth as President, and all other persons in active concert or participation with the respondents to this action and all persons having notice of this action from engaging, sponsoring, inciting or encouraging mass street parades or mass processions or like demonstrations without a permit, trespass on private property after being warned to leave the premises by the owner or person in possession of said private property, congregating on the street or public places into mobs, and unlawfully picketing business establishments or public buildings in the City of Birmingham, Jefferson County, State of Alabama or performing acts calculated to cause breaches of the peace in the City of Birmingham, Jefferson County, in the State of Alabama or from conspiring to engage in unlawful street parades, unlawful processions, unlawful demonstrations, unlawful boycotts, unlawful trespasses, and unlawful picketing or other like unlawful conduct or from violating the ordinances of the City of Birmingham and the Statutes of the State of Alabama or from doing any acts designed to consummate conspiracies to engage in said unlawful acts of parading, demonstrating, boycotting, trespassing and picketing or other unlawful acts, or from engaging in acts and conduct customarily known as "Kneel-In's" in churches in violation of the wishes and desires of said churches, until further orders from this Court; and this you will in no wise omit under penalty, etc.

Witness, O. H. Florence, Register, Circuit Court, Tenth Judicial Circuit of Alabama, this 10th day of April 1963.

O. H. Florence, Register.

Issued this 10th day of April 1963.

Executed this the Apr 11 1963 1:00 A.M. by leaving a copy of the within with Martin Luther King.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By Raymond E. Belcher, D. S.

Executed this Apr 11 1963 1:00 A. M. by leaving a copy of the within with Al Hibler.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By Raymond E. Belcher, Chief D.S.

[fol. 85] Executed this Apr 11, 1963 1:00 A.M. by leaving a copy of the within with A. D. King.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By Raymond E. Belcher, Chief D.S.

Executed this Apr 11, 1963 1:00 A. M. on Southern Christian Leadership Conference by leaving a copy of the within with Martin Luther King, President.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By Raymond E. Belcher, Chief D.S.

Executed this Apr 11, 1963 1:30 A. M. by leaving a copy of the within with Calvin Woods.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By Raymond E. Belcher, D. S.

Executed this Apr 11, 1963 1:45 A. M. by leaving a copy of the within with Aberham Woods, Jr.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By Sgt. H. J. Norman, D. S.

Executed this the Apr 11, 1963 1:00 A. M. by leaving a copy of the within with F. L. Shuttlesworth.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By Raymond E. Belcher, Chief, D. S.

Executed this Apr 11, 1963 1:00 A. M. by leaving a copy of the within with Wyatt Tee Walker.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By Raymond E. Belcher, Chief, D. S.

Executed this the Apr 11, 1963 1:00 A. M. on Alabama Christian Movement for Human Rights by leaving a copy of the within with F. L. Shuttlesworth, President.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By Raymond E. Belcher, Chief D.S.

Executed this the April 11 1963 1:00 A.M. by leaving a copy of the within with Ralph Abernathy.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By Raymond E. Belcher, Chief D.S.

Executed this Apr 11, 1963 3:25 P.M. by leaving a copy of the within with Annie Aggerton at Arrington.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By C. R. Reeves, D. S.

[fol. 86] Executed this the Apr 11 1963 3:25 P. M. by leaving a copy of the within with Jerry Dean Green.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By C. R. Reeves, D. S.

Executed this the Apr 11 1963 3:25 P. M. by leaving a copy of the within with Carl Keith, Jr.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By C. R. Reeves, D.S.

Executed this the Apr 11 1963 3:25 P. M. by leaving a copy of the within with Alice J. Holder.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By C. R. Reeves, D.S.

Executed this APR 11 1963 3:25 P.M. by leaving a copy of the within with Mable Danner.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By C. R. Reeves, D. S.

Executed this Apr 11 1963 3:25 P.M. by leaving a copy of the within with Davie Lee Hawthorne.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By C. R. Reeves, D.S.

Executed this Apr 11 1963 3:25 P.M. by leaving a copy of the within with Paula Price.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By C. R. Reeves, D.S.

Executed this Apr 11 1963 3:25 P.M. by leaving a copy of the within with Otilia Perry.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By C. R. Reeves, D.S.

Executed this Apr 11 1963 3:25 P.M. by leaving a copy of the within with Johnny Louis Palmer.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By C. R. Reeves, D.S.

Executed this Apr 11 1963 3:25 P.M. by leaving a copy of the within with Myraette Griffin.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By C. R. Reeves, D.S.

[fol. 87] Executed this Apr 11 1963 3:25 P. M. by leaving a copy of the within with Ora Mae Watkins.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By C. R. Reeves, D. S.

Executed this Apr 11 1963 3:25 P.M. by leaving a copy of the within with Ozzo Howell.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By C. R. Reeves, D.S.

Executed this Apr 11 1963 3:25 P.M. by leaving a copy of the within with Ella Ruffin.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By C. R. Reeves, D.S.

Executed this Apr 11 1963 3:25 P. M. by leaving a copy of the within with Mary Alice Jones.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By C. R. Reeves, D.S.

Executed this Apr 11 1963 3:25 P.M. by leaving a copy of the within with Edward Hendricks.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By C. R. Reeves, D.S.

Executed this Apr 11 1963 3:25 P. M. by leaving a copy of the within with Gwendolyn King.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By C. R. Reeves, D.S.

Executed this Apr 11 1963 3:25 P. M. by leaving a copy of the within with Robert J. Norris.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By C. R. Reeves, D.S.

Executed this Apr 11 1963 3:25 P.M. by leaving a copy of the within with Wilson Brown.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By C. R. Reeves, D.S.

Executed this Apr 11 1963 P. M. by leaving a copy of the within the Jerome Taylor.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By C. R. Reeves, D. S.

[fol. 88] Executed this Apr 11 1963 3:25 P. M. by leaving a copy of the within with Curtis Sanders.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By C. R. Reeves, D.S.

Executed this Apr 11 1963 3:25 P. M. by leaving a copy of the within with Theodore Reed.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By C. R. Reeves, D.S.

Executed this Apr 11 1963 3:25 P. M. by leaving a copy of the within with Frank James Jackson.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By C. R. Reeves, D.S.

Executed this Apr 11 1963 3:25 P.M. by leaving a copy of the within with Ernest English.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By C. R. Reeves, D.S.

Executed this Apr 11 1963 3:25 P. M. by leaving a copy of the within with Tommy Holt.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By C. R. Reeves, D.S.

Executed this Apr 11 1963 3:25 P. M. by leaving a copy of the within with Ezer Stovall.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By C. R. Reeves, D.S.

Executed this Apr 11 1963 3:25 P. M. by leaving a copy of the within with Dave Young.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By C. R. Reeves, D.S.

Executed this Apr 11 1963 3:25 P. M. by leaving a copy of the within with Clarence Townsend.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By C. R. Reeves, D.S.

Executed this Apr 11 1963 3:25 P. M. by leaving a copy of the within with Richard Peterson.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By C. R. Reeves, D.S.

[fol. 89] Executed this Apr 11 1963 3:25 P. M. by leaving a copy of the within with William B. Mullins.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By C. R. Reeves, D.S.

Executed this Apr 11 1963 3:25 P. M. by leaving a copy of the within with Lummie Boyd.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By C. R. Reeves, D.S.

Executed this Apr 11 1963 3:25 P. M. by leaving a copy of the within with Melvin Short.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By C. R. Reeves, D.S.

Executed this Apr 11 1963 3:25 P. M. by leaving a copy of the within with Eddie Harris.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By C. R. Reeves, D.S.

Executed this Apr 11 1963 3:25 P. M. by leaving a copy of the within with J. L. Meadows.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By C. R. Reeves, D.S.

Executed this Apr 11 1963 3:25 P. M. by leaving a copy of the within with Robert Seals.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By C. R. Reeves, D.S.

Executed this Apr 11 1963 3:25 P. M. by leaving a copy of the within with LeRoy Allen.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By C. R. Reeves, D.S.

Executed this Apr 11 1963 3:25 P. M. by leaving a copy of the within with Henry Crawford.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By C. R. Reeves, D.S.

Executed this Apr 11 1963 3:25 P. M. by leaving a copy of the within with Charles George.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By C. R. Reeves, D.S.

[fol. 90] Executed this Apr 11 1963 3:25 P. M. by leaving a copy of the within with Mary N. Nelson.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By C. R. Reeves, D. S.

Executed this Apr 11 1963 3:25 P. M. by leaving a copy of the within with Bessie Mae Abrams.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By C. R. Reeves, D. S.

Executed this Apr 11 1963 3:25 P. M. by leaving a copy of the within with Julius Minniefield.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By C. R. Reeves, D. S.

Executed this April 11 1963 6:15 by leaving a copy of the within with Annie Gooden.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By C. R. Reeves, D. S.

Executed this Apr 11 1963 3:25 P. M. by leaving a copy of the within with Carda C. Gray.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By C. R. Reeves, D. S.

Executed this Apr 11 1963 3:25 P. M. by leaving a copy of the within with Emma Bradford.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By C. R. Reeves, D. S.

Executed this Apr 11 1963 6:35 P. M. by leaving a copy of the within with Edith Burpe.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By C. R. Reeves, D. S.

Executed this the Apr 11 1963 3:25 P. M. by leaving a copy of the within with Robert Lee Jackson.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By C. R. Reeves, D. S.

Executed this Apr 11 1963 3:25 by leaving a copy of the within with Maggie Hawkins.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By C. R. Reeves, D. S.

Executed this Apr 11, 1963 3:25 P.M. by leaving a copy of the within with Rebecca Harris.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By C. R. Reeves, D. S.

[fol. 91] Executed this Apr 11 1963 4:35 P. M. by leaving a copy of the within with Katie Jefferson.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By C. R. Reeves, D. S.

Executed this Apr 11 1963 3:25 P. M. by leaving a copy of the within with Mary Francis Smith.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By C. R. Reeves, D. S.

Executed this Apr 11 1963 3:25 P. M. by leaving a copy of the within with Marie M. Pettaway.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By C. R. Reeves, D. S.

Executed this Apr 11 1963 4:30 P. M. by leaving a copy of the within with Howard Cruikshank.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By C. R. Reeves, D. S.

Executed this Apr 11 1963 3:25 P. M. by leaving a copy of the within with Mamie Ruth King.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By C. R. Reeves, D. S.

Executed this Apr 11 1963 3:25 P. M. by leaving a copy of the within with Margaret Askew.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By C. R. Reeves, D. S.

Executed this Apr 11 1963 4:20 P. M. by leaving a copy of the within with Darnell Walker.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By C. R. Reeves, D. S.

Executed this Apr 11 1963 3:45 P. M. by leaving a copy of the within with Sarah Callen who states her correct name is Sarah Callen.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By H. E. Moore, D. S.

Executed this Apr 11 1963 3:55 P. M. by leaving a copy of the within with Margaret Williams.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By H. E. Moore, D. S.

[fol. 92] Executed this Apr 11 1963 4:17 P. M. by leaving a copy of the within with Sherrill Marcus.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By H. E. Moore, D. S.

Executed this Apr 11 1963 4:30 P. M. by leaving a copy of the within with Bernard Bullard.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By H. E. Moore, D. S.

Executed this Apr 11 1963 6:30 P. M. by leaving a copy of the within with Lucille Jackson.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By H. E. Moore, D. S.

Executed this Apr 11 1963 5:20 by leaving a copy of the within with Mary Robinson.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By C. R. Reeves, D. S.

Executed this Apr 11 1963 4:15 by leaving a copy of the within with Carol Jackson.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By C. R. Reeves, D. S.

Executed this Apr 11 1963 5:00 P. M. by leaving a copy of the within with Rosie Lee Craig.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By C. R. Reeves, D. S.

Executed this Apr 11 1963 3:30 P. M. by leaving a copy of the within with Ela Mae Pegues.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By G. W. Cain, D. S.

Executed this Apr 11 1963 4:25 by leaving a copy of the within with Willie Floyd Clancy.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By C. R. Reeves, D. S.

Executed this Apr 11 1963 9:18 P. M. by leaving a copy of the within with Charles Billups.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By G. T. Hollis, D. S.

[fol. 93] Executed this Apr 11 1963 4:40 P. M. by leaving a copy of the within with Bradine King.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By G. T. Hollis, D. S.

Executed this Apr 11 1963 5:08 P. M. by leaving a copy of the within with Carter Gaston, Jr.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By G. F. Riddle, D. S.

Executed this Apr 11 1963 4:43 P. M. by leaving a copy of the within with John Hennington.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By G. F. Riddle, D. S.

Executed this Apr 11 1963 4:50 P. M. by leaving a copy of the within with Pinkie S. Franklin.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By G. F. Riddle, D. S.

Executed this Apr 11 1963 5:52 P. M. by leaving a copy of the within with Clove Smith.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By G. F. Riddle, D. S.

Executed this Apr 11 1963 3:31 P. M. by leaving a copy of the within with Benjamin Dardy.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By G. F. Riddle, D. S.

Executed this Apr 11 1963 4:17 P. M. by leaving a copy of the within with Louise Drake.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By G. F. Riddle, D. S.

Executed this Apr 11 1963 3:58 P. M. by leaving a copy of the within with Lincoln Hendrix.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By G. F. Riddle, D. S.

Executed this the Apr 11 1963 6:16 by leaving a copy of the within with Major Warren.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By G. F. Riddle, D. S.

[fol. 94] Executed this Apr 11 1963 5:10 P. M. by leaving a copy of the within with Mary Orange.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By G. C. Kuhn, D. S.

Executed this Apr 11 1963 by leaving a copy of the within with Annie Pearl Avery.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By J. L. Cochran, D. S.

Executed this Apr 11 1963 by leaving a copy of the within with Charlie Penn.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By J. L. Cochran, D. S.

Executed this Apr 11 1963 by leaving a copy of the within with Juanita Curtis.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By J. L. Cochran, D. S.

Executed this Apr 11 1963 by leaving a copy of the within with Margarette Powell.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By F. E. Rogers, D. S.

Executed this Apr 11 1963 by leaving a copy of the within with Lettie Woods who states she is Lottie Woods.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By J. L. Cochran, D. S.

Executed this Apr 12 1963 by leaving a copy of the within with Mamie L. Brown.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By W. A. Adams, D. S.

Executed this the Apr 11 1963 by leaving a copy of the within with Hester Cheatham.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By J. L. Cochran, D. S.

Executed this Apr 12 1963 by leaving a copy of the within with Carolyn Smith.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By W. A. Adams, D. S.

[fol. 95] Executed this Apr 11 1963 by leaving a copy of the within with Bertha Burkett.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By J. L. Cochran, D. S.

Executed this the 12th day of April 1963 by leaving a copy of the within with Shirley Femby 9:20 A. M.

Melvin Bailey, Sheriff, By Wm. S. Bonham, Jr., D. S.

Executed this the 11th day of April 1963 by leaving a copy of the within with Albert Paranco 6:35 P. M.

Melvin Bailey, Sheriff, By McCoy & Brown, D. S.

Executed this the 11th day of April 1963 by leaving a copy of the within with Segrist Harrison 9:45 P. M.

Melvin Bailey, Sheriff, By McCoy & Brown, D. S.

Executed this the 11th day of April 1963 by leaving a copy of the within with Dorothy Bell 5:25 P. M.

Melvin Bailey, Sheriff, By McCoy & Brown, D. S.

Executed this the 11th day of April 1963 by leaving a copy of the within with Robert A. Miller 9:05 P. M.

Melvin Bailey, Sheriff, By McCoy & Brown, D. S.

Executed this the 11th day of April 1963 by leaving a copy of the within with Peggy Lucas 4:40 P. M.

Melvin Bailey, Sheriff, By McCoy & Brown, D. S.

Executed this the 11th day of April 1963 by leaving a copy of the within with Mary Robinson 9:00 P. M.

Melvin Bailey, Sheriff, By McCoy & Brown, D. S.

Executed this the 12th day of April 1963 by leaving a copy of the within with Artha Barbara Craig 5:15 A. M.

Melvin Bailey, Sheriff, By Stewart & Love, D. S.

Executed this the 11th day of April 1963 by leaving a copy of the within with John Germany 6:40 P. M.

Melvin Bailey, Sheriff, By McCoy & Brown, D. S.

[fol. 96] Executed this the 12th day of April 1963 by leaving a copy of the within with Henry Reese 5:00 A. M.

Melvin Bailey, Sheriff, By Stewart & Love, D. S.

Executed this the 11th day of April 1963 by leaving a copy of the within with Joe Dixon 6:40 P. M.

Melvin Bailey, Sheriff, By McCoy & Brown, D. S.

Executed this the 12th day of April 1963 by leaving a copy of the within with Carlton Reese 4:30 A. M.

Melvin Bailey, Sheriff, By Stewart & Love, D. S.

Executed this Apr 12 1963 by leaving a copy of the within with Nora Tate 7:30 A. M.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By T. L. Mahaffey, D. S.

Executed this Apr 12 1963 by leaving a copy of the within with Cleopatra Kennedy 7:20 A. M.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By T. L. Mahaffey, D. S.

Executed this Apr 12 1963 7:20 P. M. by leaving a copy of the within with Ennis Knight.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By C. R. Reeves, D. S.

Executed this the 13 day of April 1963 1:00 P. M. by leaving a copy of the within with Lester Cobb, Jr.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By A. R. Bracewell, D. S.

Executed this the April 12 1963 by leaving a copy of the within with Ernestine Dixon, 7:30 A. M.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By Anderson, D. S.

Executed this Apr 12 1963 by leaving a copy of the within with T. K. Nelson 6:15 P. M.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By C. R. Reeves, D. S.

[fol. 97] Executed this April 12 1963 4:13 P. M. by leaving a copy of the within with John Thomas Porter.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By H. E. Moore, D. S.

Executed this the 4/15 1963 4:15 P. M. by leaving a copy of the within with Mary Oden.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By H. E. Moore, D. S.

Executed this the Apr 12 1963 7:15 P. M. by leaving a copy of the within with Luella Giener.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By C. R. Reeves, D. S.

Executed this the 4/12/63 by leaving a copy of the within with Annie B. Peterson.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By T. M. Tate, D. S.

William Southland Not Found in Jefferson County this the 16 day of April 1963.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By T. L. Mahaffey, D. S.

Executed this the 15th day of April 1963 8:35 A. M. by leaving a copy of the within with N. H. Smith, Jr.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By A. R. Bracewell, D. S.

Executed this the 13th day of April 1963 7:50 A. M. by leaving a copy of the within with Andrew Palm.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By Montgomery, D. S.

Hattie Pearson Not Found in Jefferson County this the Apr 16 1963.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By G. F. Riddle, D. S.

James Armstrong Not Found in Jefferson County this Apr 19 1963.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By C. E. Walker, D. S.

Otis Spearman Not Found in Jefferson County this Apr 19 1963.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By C. E. Walker, D. S.

[fol. 98] A. D. Williams King Not Found in Jefferson County Apr 19 1963.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By J. L. Cochran, D. S.

Willie Stone Not Found in Jefferson County this Apr 19 1963.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By J. L. Cochran, D. S.

Edw. Montgomery Not Found in Jefferson County this Apr 19 1963.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By J. L. Cochran, D. S.

Beatrice King Not Found in Jefferson County this Apr 19 1963.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By J. L. Cochran, D. S.

Mary Ellen Station Not Found in Jefferson County this Apr 19 1963.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By J. L. Cochran, D. S.

Geneva Jones Not Found in Jefferson County this Apr 19 1963.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By J. L. Cochran, D. S.

William Boazman Not Found in Jefferson County this Apr 19 1963.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By J. L. Cochran, D. S.

Alexander Lionel Brown Not Found in Jefferson County this Apr 19, 1963.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By J. L. Cochran, D. S.

Henry Creskey Not Found in Jefferson County this Apr 19 1963.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By J. L. Cochran, D. S.

Wilbert Crocken Not Found in Jefferson County this Apr 19 1963.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By J. L. Cochran, D. S.

Richard Harper Not Found in Jefferson County this Apr 19 1963.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By J. L. Cochran, D. S.

Betty Hill Not Found in Jefferson County this Apr 19 1963.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By J. L. Cochran, D. S.

Wanelyn Holmes Not Found in Jefferson County this Apr 19 1963.

[fol. 99] Melvin Bailey, Sheriff, Jefferson County,  
Alabama, By J. L. Cochran, D. S.

Leon Rice Not Found in Jefferson County this Apr 19 1963.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By J. L. Cochran, D. S.

Kathleen Moore Not Found in Jefferson County this Apr 19 1963.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By J. L. Cochran, D. S.

Minnie Ola Pinick Not Found in Jefferson County the Apr 19 1963.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By J. L. Cochran, D. S.

Eddie Upshaw Not Found in Jefferson County the Apr 22, 1963.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
✓ By A. R. Bracewell, D. S.

Walter Wade Lockett Not Found in Jefferson County the Apr 22 1963.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By A. R. Bracewell, D. S.

[fol. 100]

#### IN THE CIRCUIT COURT

MOTION TO DISSOLVE INJUNCTION AND/OR APPLICATION FOR STAY OF EXECUTION PENDING HEARING—Filed April 15, 1963

Now come the respondents in the above styled cause and moves the Court to dissolve the injunction heretofore issued in said cause on April 10, 1963, enjoining respondents, its agents, servants, employees, attorneys, successors and all other persons in active concert or participation with respon-

dents or in the alternative stay the execution of said injunction and/or for any other or further relief, until after a hearing on the merits of said cause from:

Engaging in sponsoring, inciting or encouraging mass street parades or mass processions or like demonstrations without a permit, trespass on private property after being warned to leave the premises by the owners or persons in possession of said private property, congregating on the street or public places into mobs, and unlawfully picketing business establishments or public buildings in the City of Birmingham [fol. 101] ham, Jefferson County, State of Alabama, or in performing acts calculated to cause breaches of the peace in the City of Birmingham, Jefferson County, State of Alabama, or from conspiring to engage in unlawful street parades, unlawful processions, unlawful demonstrations, unlawful boycotts, unlawful trespasses and unlawful picketing or other like unlawful conduct or from violating the ordinances of the City of Birmingham and the statutes of the State of Alabama, or from doing any acts designed to consummate conspiracies to engage in said picketing or other unlawful acts, or from engaging in acts and conduct customarily known as Kneel-Ins in churches, in violation of the wishes and desires of said churches, and for grounds for such dissolution or in the alternative stay of execution of said injunction until after a hearing on the merits of the matter, the respondents assign the following:

1. There is no equity in the Bill of Complaint on which the temporary injunction is granted and no grounds for invoking the jurisdiction of this Court are alleged therein.
2. It was not shown by the Bill of Complaint, the basis of the injunction, that there was a danger of irreparable injury to the complainant.
3. Complainant has an adequate remedy at law, if respondents were guilty of the matters alleged in the Complaint.

4. This injunction is improperly granted because it seeks to prohibit acts allegedly criminal which, if committed, may be punished by use of the criminal law.

5. This injunctive order violates respondents' right of due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States, because it was issued without notice to them or opportunity to be heard.

6. These respondents have been denied due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States, because the injunctive order issued herein is couched in such general, vague and indefinite terms that respondents are not able to determine what specific conduct is designed to be prohibited thereby.

7. The injunction herein was improvidently granted because it is a prior restraint on the exercise of respondents' rights of free speech and expression, which are guaranteed [fol. 102] against state encroachment by the due process clause of the Fourteenth Amendment to the Constitution of the United States.

8. This injunction violates these respondents' rights to equal protection and due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States, in that its issuance is designed to enforce the unconstitutional policy, practice, custom and usage of segregation by race in the city of Birmingham as set forth *inter alia* in Section 369 of the 1944 General City Code of Birmingham and Section 2002-1 of the Building Code of the City of Birmingham, copies of which are attached hereto as Exhibit 4:

9. This injunction denies to respondents due process of law guaranteed to them under the Fourteenth Amendment to the Constitution of the United States, because it is based upon a complaint, the allegations of which describe conduct protected from infringement by the State by said Fourteenth Amendment.

10. This injunction was improvidently granted because the ordinances which respondents are charged with violating by the complaint, and under which some of them have been arrested and charged (as shown by copies of the warrants hereto attached as exhibits 1 through 3, are unconstitutionally vague in that they do not adequately set forth standards by which to determine whether or not respondents have, or may at some future time violate their terms since the language of these ordinances is so general that it is impossible to determine exactly what conduct is meant to be prohibited. Application of such vague and indefinite ordinances to the conduct of respondents as shown by the affidavits attached hereto as Exhibits 5 through 10 by arrest and imprisonment is therefore an infringement of respondents' rights of free expression guaranteed under the due process clause of the Fourteenth Amendment to the Constitution of the United States.

11. That the injunction issued against these respondents is improper and violates rights secured to these respondents by the Constitution of Alabama Art. I, Section 25 viz. Freedom of Assembly, Freedom of Speech, freedom to remonstrate to petition and protest.

[fol. 103]                      Respectfully submitted,

Arthur D. Shores, 1527 Fifth Avenue, North  
Birmingham, Alabama;

Orzell Billingsley, Jr., 1630 Fourth Avenue, North,  
City;

Norman Amaker, Jack Greenberg, Constance B.  
Motley, Leroy D. Clark, 10 Columbus Circle, New  
York, N. Y.;

Attorneys for Respondents.

[fol. 110]

## EXHIBIT 4 TO MOTION

**Sec. 369 Separation of races: General City Code of Birmingham.**

It shall be unlawful to conduct a restaurant or other place for the serving of food in the city, at which white and colored people are served in the same room, unless such white and colored persons are effectually separated by a solid partition extending from the floor upward to a distance of seven feet higher, and unless a separate entrance from the street is provided for each compartment.

**Sec. 597. Negroes and white persons not to play together.**

It shall be unlawful for a negro and a white person to play together or in company with each other in any game of cards or dice, dominoes or checkers.

Any person who, being the owner, proprietor or keeper or superintendent of any tavern, inn, restaurant or other public house or public place, or the clerk, servant or employee of such owner, proprietor, keeper or superintendent, knowingly permits a negro and a white person to play together or in company with each other at any game with cards, dice, dominoes or checkers, or any substitute or device for cards, dice, dominoes or checkers, in his house or on his premises shall, on conviction, be punished as provided in section 4.

**Section 2002—SANITATION. Building Code, City of Birmingham, Alabama.****2002.1—Toilet Facilities.**

Toilet facilities shall be provided in all occupancies for each sex, according to Table 2002.2 except one family living units. The number provided for each sex shall be based on the maximum number of persons of that sex that may be expected to use such building at any one time. Where negroes and whites are accommodated there shall be separate toilet facilities provided for the former, marked plainly "For Negroes only."

**EXHIBIT 5 TO MOTION**

**IN THE CIRCUIT COURT FOR THE  
TENTH JUDICIAL CIRCUIT OF ALABAMA**

**IN EQUITY**

**No. ....**

**CITY OF BIRMINGHAM, a Municipal Corporation  
of the State of Alabama**

**COMPLAINANT**

**vs.**

**WYATT T. WALKER, ET AL.**

**RESPONDENTS**

[fol. 111]

**AFFIDAVIT OF CLEOPATRA KENNEDY**

STATE OF ALABAMA     )  
JEFFERSON COUNTY     ) ss:  
CITY OF BIRMINGHAM    )

Before me personally appeared Cleopatra Kennedy, who after being first duly sworn, deposes and says:

That she is a Negro citizen of the United States, residing at 1814 North 22nd Street, Birmingham, Alabama.

That on or about April 7, 1963, at approximately 4:00 P. M., she accompanied by other Negro citizens of the United States, left the St. Paul Methodist Church, located at 15th Street and Sixth Avenue, North, Birmingham, Alabama, and proceeded to walk east on Sixth Avenue, North two abreast in the general direction of the Birmingham City Hall.

That she and the other persons accompanying her, proceeded in peaceful and orderly fashion at a moderate pace,

toward the City Hall, obeying all traffic lights and posted traffic signals along the route being traveled.

That she and the others, with whom she was walking, were stopped by police officers of the City of Birmingham, near the corner of 17th Street and Sixth Avenue, North, and an inquiry was made by the police officers of those persons walking at the head of the group, as to whether or not these persons had obtained a permit to parade. Those leading the group responded in the negative, whereupon she and all other persons, accompanying her were placed under arrest for parading without a permit in violation of Section 1159 of the 1944 General City Code of Birmingham, Alabama, The group then kneeled and prayed, and were afterwards taken to the City Jail.

That she and the other members of the group, all Negro citizens of the United States, were seeking only to demonstrate their dissatisfaction with the conditions of Negro life in the City of Birmingham, and to petition the city government in peaceful and orderly fashion for redress of their grievances, which they were prevented from doing by [fol. 112] their arrest by police officers of the City of Birmingham, as described above.

Cleopatra Kennedy  
CLEOPATRA KENNEDY

Sworn to and subscribed before me this 15 day of April,  
1963.

Arthur D. Shores  
NOTARY PUBLIC

## EXHIBIT 6 TO MOTION

IN THE CIRCUIT COURT FOR THE  
TENTH JUDICIAL CIRCUIT OF ALABAMA

IN EQUITY

No. ....

CITY OF BIRMINGHAM, A Municipal Corporation of the  
STATE OF ALABAMA

COMPLAINANT

VS.

WYATT T. WALKER, ET AL.

RESPONDENTS

AFFIDAVIT OF ANNIE B. PETERSON

STATE OF ALABAMA     )  
JEFFERSON COUNTY     ) ss:  
CITY OF BIRMINGHAM    )

Before me, personally appeared Annie B. Peterson, who after being first duly sworn, deposes and says:

That she is a Negro citizen of the United States, residing in New Castle, Alabama at .....

That on or about April 6, 1963, at approximately 12:30 P.M., she, in the company of about 42 other persons left the Gaston Motel located at 1510 Fifth Avenue, North, Birmingham, Alabama, and proceeded to walk east on Fifth Avenue, North, two abreast in the general direction of the Birmingham City Hall.

That she and the other persons accompanying her, proceeded in peaceful and orderly fashion at a moderate pace, toward the City Hall, obeying all traffic lights and posted traffic signals along the route being traveled.

That she and the others, with whom she was walking, were stopped by police officers of the City of Birmingham, as they approached the corner of 19th Street and Fifth Avenue, North, and an inquiry was there made by the police officers of Rev. F. L. Shuttlesworth and Rev. Charles Bil-lups who were walking in the front of the group as to [fol. 113] whether these persons had obtained a permit to parade. Rev. Shuttlesworth answered, "No", whereupon all of the persons in the group kneeled and prayed. The group was then placed under arrest for "parading without a permit", in violation of Section 1159 of the 1944 General City Code of Birmingham, Alabama, and transported to the City Jail.

That she and the other members of the group, all Negro citizens of the United States, were seeking only to demonstrate their dissatisfaction with the conditions of Negro life in the City of Birmingham, and to petition the city government in peaceful and orderly fashion for redress of their grievances, which they were prevented from doing by their arrest by police officers of the City of Birmingham, as described above.

Annie B. Peterson  
ANNIE B. PETERSON

Sworn to and subscribed before me this 15 day of April,  
1963.

Arthur D. Shores  
NOTARY PUBLIC

## EXHIBIT 7 TO MOTION

IN THE CIRCUIT COURT FOR THE  
TENTH JUDICIAL CIRCUIT OF ALABAMA

IN EQUITY

No. \_\_\_\_\_

CITY OF BIRMINGHAM, A Municipal Corporation of the  
STATE OF ALABAMA

COMPLAINANT

VS.

WYATT TEE WALKER, ET AL.

RESPONDENTS

## AFFIDAVIT OF SHERRILL MARCUS

STATE OF ALABAMA     )  
JEFFERSON COUNTY     ) SS:  
CITY OF BIRMINGHAM    )

Before me personally appeared Sherrill Marcus, who after being first duly sworn, deposes and says:

That he is a Negro citizen of the United States, residing at 127 Morris Avenue, Birmingham, Alabama.

That on or about April 5, 1963, he and others, Negro citizens of the United States, entered Lane's Drug Store at First Avenue and 20th Street, North, Birmingham, Alabama, and seated themselves at the lunch counter located [fol. 114] therein. They were asked by the waitress if she could help them. They replied in the affirmative and deponent and those with him each ordered a cup of coffee. Before the coffee was brought to them, deponent and his companions were approached by the manager of the luncheonette who told them that the lunch counter was closed.

Deponent answered by saying that he wanted a cup of coffee whereupon the manager departed and the waitress returned and informed deponent and his companions that she would give them coffee in a paper cup. Deponent replied that that would be all right if they could drink the coffee there. The waitress then left him and his companions, but the manager returned with a police officer of the City of Birmingham and asked deponent and those with him if they were going to leave. Deponent replied that they would like to be served. Deponent and his companions were then arrested for "trespass after warning", pursuant to Section 1663-F of the 1944 Birmingham General City Code.

That he and the persons who accompanied him were seeking service at a business establishment open to the general public, which denies Negro patronage, though Negro citizens residing in Birmingham are part of the general buying public. He and the persons with him were seeking to express their dissatisfaction with this status in the City of Birmingham, and to persuade the proprietor of the business establishment in question, to accept their patronage. Deponent says that he and those with him were prevented from continuing to seek service and to persuade the proprietor of the coffee shop to accept their patronage by their arrest by police officers of the City of Birmingham, as described above.

Sherrill Marcus  
SHERRILL MARCUS

Sworn to and subscribed before me this 15 day of April, 1963.

Arthur D. Shores  
NOTARY PUBLIC

## EXHIBIT 8 TO MOTION

IN THE CIRCUIT COURT FOR THE  
TENTH JUDICIAL CIRCUIT OF ALABAMA

IN EQUITY

No. 130-173

CITY OF BIRMINGHAM, A Municipal Corporation of the  
STATE OF ALABAMA

COMPLAINANT

VS.

WYATT TEE WALKER, ET AL.

RESPONDENTS

[fol. 115] AFFIDAVIT OF BRADINE KING

STATE OF ALABAMA     )  
JEFFERSON COUNTY     ) SS:  
CITY OF BIRMINGHAM   )

Before me personally appeared Bradine King, who after being first duly sworn, deposes and says:

That she is a Negro citizen of the United States, residing at 6332—36th Avenue, North, Birmingham, Alabama.

That on or about April 5, 1963, at approximately 11:30 A.M., she and three other persons, Negro citizens of the United States, entered the coffee shop of the Tutwiler Hotel, at 20th Street and Fifth Avenue, North, Birmingham, Alabama, entering through the door opening on Fifth Avenue. She, and those accompanying her, took seats at the lunch counter located in the coffee shop of the Hotel.

That she and the three persons with her had been seated at the lunch counter approximately three minutes when the manager of the coffee shop approached them and informed

them that they could not be served. One member of the group replied that they had come into the shop for food and would like to be served. The manager asked them to leave, but she and those with her remained. A police officer of the City of Birmingham, then told the manager to "tell them again to leave". Deponent and those with her, remained seated whereupon they were told by a police officer, "let's go".

That she and those with her were then taken from the coffee shop by police officers of the City of Birmingham, and transported in four police cars to the City Hall. While being transported deponent was told that she was under arrest. She was then taken in the company of others to the City Jail and charged with "trespass after warning" said charge being lodged under Section 1663-F of the 1944 Birmingham General City Code.

That she and the three persons who accompanied her were seeking service at a business establishment open to the general public, which denies Negro patronage, though Negro citizens residing in Birmingham are part of the general buying public. She and the persons with her were seeking to express their dissatisfaction with this status in the City of [fol. 116] Birmingham, and to persuade the proprietor of the business establishment in question, to accept their patronage. Deponent says that she and those with her were prevented from continuing to seek service and to persuade the proprietor of the coffee shop to accept their patronage by their arrest by police officers of the City of Birmingham, as described above.

Bradine King  
BRADINE KING

Sworn to and subscribed before me this 18th day of April, 1963.

Agnes N. Studemire  
NOTARY PUBLIC

(SEAL)

**EXHIBIT 9 TO MOTION**

**IN THE CIRCUIT COURT FOR THE  
TENTH JUDICIAL CIRCUIT OF ALABAMA  
IN EQUITY  
No. 130-173**

**CITY OF BIRMINGHAM, A Municipal Corporation of the  
STATE OF ALABAMA**

**COMPLAINANT**

**vs.**

**WYATT TEE WALKER, ET AL.**

**RESPONDENTS**

**AFFIDAVIT OF WILLIAM MULLIN**

**STATE OF ALABAMA     )  
JEFFERSON COUNTY     ) ss:  
CITY OF BIRMINGHAM    )**

Before me personally appeared William Mullin, who after being first duly sworn, deposes and says:

That he is a Negro citizen of the United States, residing at 1320 First Court, West, Birmingham, Alabama.

That on or about Tuesday, April 9, 1963, at approximately 4:00 P.M., he and others, Negro citizens of the United States, entered the Bohemian Bakery, located at Fourth Avenue, North, between 18th and 19th Streets, in Birmingham. That he and those accompanying him picked up trays at the entrance to the food line, secured dessert and took seats at tables in the portion of the bakery reserved for eating.

That as he and his companions were eating, an employee of the Bakery told them that it was against the city ordi-

nance for them to eat there. The cashier thereupon placed a phone call and a few minutes later the manager appeared with some policemen of the city of Birmingham who with the manager stood and watched deponent and his com-[fol. 117] panions while they were eating. Deponent observed that the manager and policemen were talking among themselves. When the group finished eating, some of the policemen approached deponent and his companions and asked each of them for identification with which they were furnished.

One of the police officers said, "What shall we charge them with", or words to that effect and another policeman answered, "trespass". Officer Guy, of the Birmingham Police said, "give them disorderly conduct too" or words to that effect. Whereupon each member of the group was told to rise and was searched. The policemen began escorting deponent and his companions out of the Bakery and as each of them offered to pay for the food they had eaten, thier money waa refused. Deponent and his companions were arrested, taken to the city jail and charged with both trespass after warning and disorderly conduct, which deponent avers on information and belief to be charges lodged under Sections 1663-F and 311 respectively, of the 1944 General Code of the City of Birmingham, Alabama.

That he and the persons who accompanied him were seeking service at a business establishment open to the general public, which denies Negro patronage, though Negro citizens residing in Birmingham are part of the general buying public. He and the persons with him were seeking to express their dissatisfaction with this status in the City of Birmingham, and to persuade the proprietor of the business establishment in question, to accept their patronage. Deponent says that he and those with him were prevented from continuing to seek service and to persuade the proprietor of the bakery to accept their patronage by their

arrest by police officers of the City of Birmingham, as described above.

William Mullin  
WILLIAM MULLIN

Sworn to and subscribed before me this 18th day of April, 1963.

Agnes N. Studemire  
NOTARY PUBLIC

(SEAL)

{fol. 118]

EXHIBIT 10 TO MOTION

IN THE CIRCUIT COURT FOR THE  
TENTH JUDICIAL CIRCUIT OF ALABAMA  
IN EQUITY

No. 130-173

CITY OF BIRMINGHAM, A Municipal Corporation of the  
STATE OF ALABAMA,

Complainant,

vs.

WYATT TEE WALKER, et al.,

Respondents.

AFFIDAVIT OF JULIUS MINNIFIELD

STATE OF ALABAMA     )  
JEFFERSON COUNTY     ) ss.  
CITY OF BIRMINGHAM    )

Before me personally appeared Julius Minnifield, who after being first duly sworn, deposes and says:

That he is a Negro citizen of the United States residing at 1113 Short Third Alley South, Birmingham, Alabama.

That on or about April 10, 1963 at approximately 12:15 p.m., he and approximately nine other persons, Negro citizens of the United States and the State of Alabama left the

Masonic Temple located at 531 North 19th Street and proceeded in a group in the direction of the City Hall. He and those with him were carrying picket signs. It was their intention to picket the City Hall in peaceful fashion in order to protest the city's continuing policy of segregation.

As he and the others in the group were walking toward City Hall, they were stopped by police officers of the City of Birmingham at the corner of Fifth Avenue and 19th Street North. When the group was stopped, deponent says, he observed that an automobile which had just gone by his group turned around in the middle of 19th Street and came and stopped at the curb near the corner where the group was stopped. In the car were two men whom deponent identifies as Arthur Hanes, Chairman of the Birmingham City Commission and Mayor and Jamie Moore, Police Chief of the City of Birmingham. Chief of Police, Moore, got out of the car and asked the group whether they had a permit to picket. He was told that they did not. Thereupon, he directed the arrest of deponent and the others in the group.

That he and those with him were merely seeking to [fol. 119] peacefully picket in protest against the conditions of Negro life in Birmingham and that they were prevented from so doing by their arrest by police officers of the City of Birmingham.

Julius Minnifield  
JULIUS MINNIFIELD

Sworn to and subscribed before me this 18th day of April, 1963.

AGNES N. STUDEMIRE  
NOTARY PUBLIC

(SEAL)

## IN THE CIRCUIT COURT

ORDER FIXING DATE TO HEAR—April 15, 1963

The foregoing Motion and/or application of respondents in the above entitled cause to dissolve the temporary injunction or stay the execution thereof having been presented to the Court and to the undersigned as Judge thereof, that said Motion or Application be and the same is hereby set for hearing on the 22nd day of April 1963, at 9:30 O'Clock A. M., and that notice of such hearing of said Motion and/or application be served upon complainant herein by delivering to their Solicitor at his office, a copy of this Order and of the foregoing Motion and/or application.

DONE THIS 15th day of April, 1963.

W. A. Jenkins, Jr., Circuit Judge in Equity.

4/15/63

I hereby certify that I have served a copy of the foregoing Motion and Order on the Hon. J. M. Breckenridge, City Atty.

This 15th day of April, 1963.

Arthur D. Shores, Solcitr.

Filed in Office April 15, 1963

## IN THE CIRCUIT COURT

PETITION FOR RULE NISI

*To Any of the Honorable Judges of Said Court, in Equity Sitting:*

Comes the City of Birmingham, a municipal corporation organized under and by virtue of the laws of the State of Alabama, and avers as follows:

1. Petitioner is a municipal corporation organized and existing under the laws of the State of Alabama.

[fol. 120] 2. Respondents Wyatt Tee Walker, Ralph Abernathy, James Bevels, Andrew Young, F. L. Shuttlesworth and Martin Luther King, Jr., are each nonresidents of the State of Alabama. Wyatt Tee Walker, Ralph Abernathy, and Martin Luther King, Jr., reside in Atlanta, Georgia. F. L. Shuttlesworth resides in Cincinnati, Ohio. Andrew Young resides in Tennessee and James Bevels in Mississippi. All of said respondents except Shuttlesworth are presently temporarily staying at the A. G. Gaston Motel at 1510 5th Avenue, North, Birmingham, Alabama. F. L. Shuttlesworth is temporarily staying at 3164 29th Avenue, North, Birmingham, Alabama. Aberham Woods, Jr., resides at 125 Kappa Avenue, South, Birmingham, Alabama; Calvin Woods at 1240 3rd Street, North, Birmingham, Alabama; Johnny Louis Palmer at 237 South 8th Avenue, Birmingham, Alabama; J. W. Hayes at 1818 19th Street, Ensley; Ed Gardner at 6207 3rd Avenue, North, Birmingham, Alabama; N. H. Smith, Jr., at 1700 1st Street, South, Birmingham, Alabama; A. D. King at 712 12th Street, Ensley, Alabama; John Thomas Porter, 1531 6th Avenue, South, Birmingham, Alabama; and T. L. Fisher, #10 16th Avenue, West, Birmingham, Alabama.

3. On, to-wit: the 10th day of April, 1963, bill of complaint was filed by petitioner herein naming as parties respondent, among others, each of the parties respondent to this petition, with the exception of Ed Gardner, J. W. Hayes, James Bevels, Andrew Young and T. L. Fisher. Said cause is numbered 130-173.

4. On verified allegations and the affidavits of Captain G. V. Evans and Captain George Wall order was entered on the 10th day of April, 1963, at 9 o'clock P. M., issuing the temporary injunction against all respondents named in said bill of complaint (including among others, Alabama Christian Movement for Human Rights) their agents, mem-

bers, employees, servants, followers, attorneys, successors and all other persons in active concerts or participation with the respondents and all persons having notice of said order from "engaging in, sponsoring, inciting, or encouraging mass street parades or mass processions or like demonstrations without a permit, trespass on private property after being warned to leave the premises by the owner or person in possession of said private property, congregating on the street or public places into mobs, and unlawfully picketing business establishments or public buildings in [fol. 121] the City of Birmingham, Jefferson County, State of Alabama or performing acts calculated to cause breaches of the peace in the City of Birmingham, Jefferson County, in the State of Alabama or from conspiring to engage in unlawful street parades, unlawful processions, unlawful demonstrations, unlawful boycotts, unlawful trespasses, and unlawful picketing or other like unlawful conduct or from violating the ordinances of the City of Birmingham and the Statutes of the State of Alabama or from doing any acts designed to consummate conspiracies to engage in said unlawful acts of parading, demonstrating, boycotting, trespassing and picketing or other unlawful acts, or from engaging in acts and conduct customarily known as "kneel-ins" in churches in violation of the wishes and desires of said churches. Petitioner attaches hereto a true and correct copy of said bill of complaint and said order marked Exhibits A and B, respectively and hereby makes the same a part hereof as if fully set out herein with leave of reference.

5. The said Wyatt Tee Walker; Ralph Abernathy, F. L. Shuttlesworth, Martin Luther King, Jr. and A. D. King, Abernham Woods, Jr. and Calvin Woods were duly served with writs of injunction issued pursuant to said order on, to-wit: the night of April 10 or morning of April 11, 1963. All matters and things which are hereinafter alleged as having been done by each of said respondents were done or committed by each of said respondents, subsequent to

the service of said injunction upon each of them who were specifically made parties and as to those respondents hereto who were not made parties to said cause numbered 130-173, the same were done and committed by them with knowledge of the issuance of said injunction.

6. On the 11th day of April, 1963, at a press conference to which representatives of the local and national press, radio and television were invited the said respondents Walker, Abernathy, Shuttlesworth and Martin Luther King, Jr., issued a written news release at approximately 12 Noon on said date in which among other things they stated: "We cannot in all good conscience obey such an injunction," referring to the writ of injunction issued pursuant to the above mentioned order. A photostatic copy of said news release is attached hereto and made a part hereof as if fully set out herein, marked Exhibit "C". At said time in addition to the written press release, the said [fol. 122] King, Shuttlesworth, Abernathy, and Walker verbally stated that it was their intention to seek a dissolution of said injunction but they did not intend to obey the same and in substance stated that they would defy and violate the injunction and continue their demonstrations and activities or movement "today, tomorrow, Saturday, Sunday, Monday, and on through." All of such statements were cheered and approved by all of said respondents last above named and others who were present on said occasion, including respondent, A. D. King. At said press conference announcement was made by one or more of said respondents hereto inviting all present to attend a rally or meeting to be held on that night, April 11, at 6 P.M., at Sixth Avenue Baptist Church.

7. Said meeting or rally as announced was held on Thursday night, April 11, at the Negro Baptist church above mentioned. Those present were asked to pay their dues of \$1.00 as members of Alabama Christian Movement For Human Rights. Among other things said and done at said meeting respondent Martin Luther King, Jr., made

a statement in substance that they were going to have a parade, march, or procession at high noon on Good Friday, April 12th, and that he would go to jail on that date and further stated in substance that: "Injunction or no injunction, we're going to march. Here in Birmingham we have reached the point of no return and now authorities will know that an injunction can't stop us." At said meeting said respondent and others of said respondents solicited volunteers to engage in said unlawful march or procession upon the streets and sidewalks of the City of Birmingham without a permit as required by City Ordinance and in violation of said injunction. Respondents Abernathy, Shuttlesworth and A. D. King also announced at said meeting they would participate in such unlawful march or procession and would go to jail. One or more of said respondents openly boasted at said meeting that the injunction had been violated that day, Thursday, April 11. Petitioner avers that said meeting was in truth and fact a meeting of the Alabama Christian Movement for Human Rights and that similar meetings were held by said organization on Friday and Saturday nights, April 12th and April 13th, 1963, at different Negro churches.

[fol. 123] 8. At said meeting on Friday night, April 12th, respondent, James Bevels, spoke to the meeting in effect belittling and bemeaning Commissioner of Public Safety, Eugene Connor, and the Birmingham Police Department and urging all Negroes to join in the "movement". Respondent, Wyatt Tee Walker, called for volunteers to go to jail and also made a call for about a dozen or two volunteers willing to die for the cause.

9. At said meeting on Saturday night, April 13, respondent Wyatt Tee Walker, called for volunteers to engage in an unlawful procession or march upon the sidewalks and streets of Birmingham without a permit and in violation of said injunction, on Easter Sunday, April 14th, 1963. Respondents, Ed Gardner, A. D. King, Jr., Calvin Woods, Abraham Woods, Jr., J. W. Hayes, Johnny Palmer and

Andrew Young participated in soliciting volunteers of all ages, from the first grade up. Some of said respondents at said time also called for volunteers to call other Negroes to assemble as many Negroes as possible at the time of said march or procession on Easter Sunday.

10. Said injunction has been defied and openly violated by respondents hereto and others in conspiracy and concert of action with them each day since the same was issued in addition to those matters and things hereinabove alleged, among other things as follows:

A. On April 11, 1963, at about 2:30 P. M., a procession or parade or illegal march was conducted on the streets of Birmingham without a permit in which one or more of those who participated were parties respondent to said cause #130-173. On said date at 3:30 P. M., and at 3:55 P. M., respectively, two other processions or parades without a permit were conducted upon the public streets of the City of Birmingham.

B. April 12, 1963, in response to the solicitation made at said meeting hereinabove alleged which was held on April 11, 1963, an unlawful procession or march upon the City Hall upon the streets and sidewalks of Birmingham, Alabama, was conducted without a permit, in which approximately fifty Negroes were engaged. This procession was led by respondents, Martin Luther King, Jr., and Ralph Abernathy. Respondent, Shuttlesworth, also participated [fol. 124] therein. On said occasion a large mob of Negroes, of approximately a thousand, was gathered around Zion Hill Missionary Baptist Church, at 1414 6th Avenue, North, Birmingham, Alabama, blocking the sidewalk; said mob moved along the side, in front and behind those engaged in said procession.

C. On the 13th day of April, 1963, a group of, to-wit: six Negroes trespassed upon the private property of Atlantic Mills Thrift Center, a large retail store at 1216 8th Avenue, North, and were arrested upon complaint of the

manager or person in charge of said store for trespass after warning. Said trespasses upon said private property picketed or walked upon the private property owned or leased by said store or its owner carrying picket signs reading in substance, "Birmingham Merchants Unfair" and "If Khrushchev can Eat Here, Why Can't We", and of similar nature. Said picketers, trespassers or most of them attended said meeting held on April 13, hereinabove mentioned.

D. On Easter Sunday afternoon, in response to the said solicitations made at said meeting on Saturday night, April 13th, as hereinabove alleged and as a part of said conspiracy and concert of action, an unruly mob of chanting, dancing, hopping Negroes consisting of several thousand assembled in and around Thurgood C.M.E. Church at 11th Street and 7th Avenue, North. An unlawful procession consisting of several hundred Negroes formed at said church and proceeded to parade or march upon the public sidewalks and streets of the City of Birmingham without a permit, unlawfully and in violation of City Ordinance and in violation of said injunction. Said unruly mob followed along side, behind and in front of said procession and persons forming a part of said mob threw rocks, brickbats or other dangerous objects at members of the Police Department of the City of Birmingham engaged in arresting said members of said procession. A motor vehicle of the Police Department was struck by a rock or brickbat or other hard object and was seriously damaged. Mr. James Ware, a newspaper photographer employed by Birmingham Post-Herald was struck and injured by a rock or other dangerous object. Other persons, including police officers, were narrowly missed by said rocks or other dangerous objects which were thrown on said occasion. One [fol. 125] officer of the said Police Department was injured by one of said paraders or marchers resisting arrest in the tense atmosphere created by said mob.

11. Petitioner avers that respondents A. D. King, N. H. Smith, Jr., J. W. Hayes, John Thomas Porter, all of whom were named respondents in said cause number 130-173, and who had previously been served with said injunction participated in said procession, parade or march. Respondent T. L. Fisher participated therein with knowledge of said injunction.

12. Petitioner avers that the acts and things hereinabove in paragraphs 6, 7, 8, 9, 10 and 11 alleged constitute an open, flagrant, wilful, malicious, intentional violation of said injunction and a flaunting of the due process of the law and open defiance of this Court. Petitioner further avers that the acts and conduct and statements of said respondents, Wyatt Tee Walker and F. L. Shuttlesworth, who are public information officer and president respectively of the Alabama Christian Movement for Human Rights; Ed Gardner, who is vice president of said organization; Martin Luther King, Jr., president and Ralph Abernathy leader of Southern Christian Leadership Conference and, in particular the press release and press statements made as alleged hereinabove in paragraph 6 and those statements made at said meeting April 11 as alleged in paragraph 7, in substance and effect that said respondents Shuttlesworth, Abernathy, Walker and Martin Luther King would not recognize and would not obey said injunction irrespective of whether same were dissolved or not and would continue to commit the unlawful acts restrained and prohibited by said injunction, injunction or no injunction, constitutes an open, defiant repeated and continuing day by contempt of this court and contempt of said injunction, and said contempt is continued and repeated each day until said respondents shall publicly recant or retract same by announcement by said respondents so recanting or retracting same with similar or equal press, radio and T.V. coverage as when said statements were made.

Wherefore, petitioners pray that this Court will cause a rule nisi to be issued to the respondents; Wyatt Tee

Walker, Ralph Abernathy, F. L. Shuttlesworth, Martin Luther King, Jr., A. D. King, Ed Gardner, Calvin Woods, Aberham Woods, Jr., Andrew Young, Johnny Louis [fol. 126] Palmer, J. W. Hayes, N. H. Smith, Jr., John Thomas Porter, T. L. Fisher, James Bevels, John Doe and Richard Roe, whose names are otherwise unknown and who will be added as parties respondent, when ascertained, separately and severally and that they and each of them be required to appear before this Court on such date and at such hour as may be set by the Court, then and there to show cause, if any there be, why they and each of them should not be adjudged and punished as for a contempt of this Honorable Court; and further why each of said respondents, Wyatt Tee Walker, Ralph Abernathy, F. L. Shuttlesworth and Martin Luther King, Jr., shall not continue to be adjudged in contempt of this court and from time to time punished therefor unless they shall publicly retract or recant the statements made publicly at press conferences and mass meeting on April 11, 1963, of their intention to violate the injunction described in the foregoing petition.

J. M. Breckenridge, Earl McBee, Solicitors for  
Petitioner.

*Duly sworn to by Jamie Moore and W. J. Haley, jurats  
omitted in printing.*

## EXHIBIT "C" TO PETITION

NEWS from  
 ALABAMA CHRISTIAN MOVEMENT FOR HUMAN RIGHTS  
 505½ No. 17th Street  
 B'ham, Ala.

[fol. 127]

FOR RELEASE 12:00 Noon, April 11, 1963

STATEMENT BY M. L. KING, JR., F. L. SHUTTLESWORTH,  
 RALPH D. ABERNATHY, ET AL. FOR ENGAGING IN PEACEFUL  
 DESEGREGATION DEMONSTRATIONS

In our struggle for freedom we have anchored our faith and hope in the rightness of the Constitution and the moral laws of the universe.

Again and again the Federal judiciary has made it clear that the privileges guaranteed under the First and the Fourteenth Amendments are too sacred to be trampled upon by the machinery of state government and police power. In the past we have abided by Federal injunctions out of respect for the forthright and consistent leadership that the Federal judiciary has given in establishing the principle of integration as the law of the land.

However we are now confronted with recalcitrant forces in the Deep South that will use the courts to perpetuate the unjust and illegal system of racial separation.

Alabama has made clear its determination to defy the law of the land. Most of its public officials, its legislative body and many of its law enforcement agents have openly defied the desegregation decision of the Supreme Court. We would feel morally and legally responsible to obey the injunction if the courts of Alabama applied equal justice to all of its citizens. This would be

MORE MORE

sameness made legal. However the issuance of this injunction is a blatant of *difference* made *legal*.

Southern law enforcement agencies have demonstrated now and again that they will utilize the force of law to misuse the judicial process.

This is raw tyranny under the guise of maintaining law and order. We cannot in all good conscience obey such an injunction which is an unjust, undemocratic and unconstitutional misuse of the legal process.

We do this not out of any disrespect for the law but out of the highest respect for *the* law. This is not an attempt [fol. 128] to evade or defy the law or engage in chaotic anarchy. Just as in all good conscience we cannot obey unjust laws, neither can we respect the unjust use of the courts.

We believe in a system of law based on justice and morality. Out of our great love for the Constitution of the U. S. and our desire to purify the judicial system of the state of Alabama, we risk this critical move with an awareness of the possible consequences involved.

For Further Information—Phone 324-5944, Wyatt Tee Walker, Public Information Officer.

[fol. 141]

#### IN THE CIRCUIT COURT

#### ORDER AND RULE TO SHOW CAUSE AND RETURNS THEREON

This day came the Petitioner, City of Birmingham, a municipal corporation, and filed herein a petition verified by Jamie Moore and W. J. Haley praying for an order upon Wyatt Tee Walker, Ralph Abernathy, A. D. King, Ed Gardner, Calvin Woods, Aberham Woods, Jr., Andrew Young, Johnny Louis Palmer, J. W. Hayes, N. H. Smith, Jr., John Thomas Porter, T. L. Fisher, James Bevels, F. L. Shuttlesworth, Martin Luther King, Jr., and respondents John Doe and Richard Roe, whose names are otherwise unknown to petitioner but who will be correctly inserted by amendment when ascertained, to show cause why

they, and each of them, should not be punished as for contempt of this Honorable Court; and further, why each of said respondents Wyatt Tee Walker, Ralph Abernathy, F. L. Shuttlesworth and Martin Luther King, Jr., shall not continue to be adjudged in contempt of this Court and from time to time punished therefor unless they shall publicly retract or recant the statements made publicly at press conferences and mass meeting on April 11, 1963, of their intention to violate the injunction described in the foregoing petition. A true and correct copy of said certified petition is set out above and now upon consideration of same, it is

Ordered, Adjudged and Decreed by the Court:

1. That Wyatt Tee Walker, Ralph Abernathy, A. D. [fol. 142] King, Ed Gardner, Calvin Woods, Aberham Woods, Jr., Andrew Young, Johnny Louis Palmer, J. W. Hayes, N. H. Smith, Jr., John Thomas Porter, T. L. Fisher, James Bevels, F. L. Shuttlesworth, Martin Luther King, Jr., appear before the undersigned in his courtroom at the Jefferson County Courthouse in the City of Birmingham on the 22nd day of April, 1963, at 9:30 o'clock A.M., then and there to show cause, if any they have, why they and each of them, should not be punished as for a contempt of this Court and as to respondents Wyatt Tee Walker, Ralph Abernathy, F. L. Shuttlesworth and Martin Luther King, Jr. why they shall not continue to be adjudged in contempt of this Court and from time to time punished therefor unless they shall publicly retract or recant the statements made publicly at press conferences and mass meeting on April 11, 1963, of their intention to violate the injunction described in the foregoing petition, for and on account of the matters and things set out in the foregoing verified petition.

2. That the Sheriff of Jefferson County be and he hereby is directed forthwith to serve upon the said Wyatt Tee Walker, Ralph Abernathy, A. D. King, Ed Gardner, Calvin Woods, Aberham Woods, Jr., Andrew Young, Johnny Louis

Palmer, J. W. Hayes, N. H. Smith, Jr., John Thomas Porter, T. L. Fisher, James Bevels, F. L. Shuttlesworth, Martin Luther King, Jr., and respondents John Doe and Richard Roe, whose names are otherwise unknown to complainant but who will be correctly inserted by amendment when ascertained, a copy of this Order and the foregoing petition and make due return thereof.

Done and Ordered, this the 15th day of April, 1963, at 5 P. M.

W. A. Jenkins, Jr., Circuit Judge in Equity Sitting.

Filed in Office April 15, 1963.

James Bevels Not Found in Jefferson County this Apr 19 1963.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By H. E. Moore, D. S.

Unable to serve at Gaston Motel. They say he has not been there for 3 or 4 days.

[fol. 143] Executed this the Apr 16 1963 10:35 A. M. by leaving a copy of the within with Ralph Abernathy.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By A. R. Bracewell, D. S.

Executed this the Apr 16 1963 12:35 P. M. by leaving a copy of the within with Johnny Louis Palmer.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By A. R. Bracewell, D. S.

Executed this the Apr 16 1963 5:50 P. M. by leaving a copy of the within with J. W. Hayes.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By J. L. Cochran, D. S.

Executed this the Apr 16 1963 10:35 A. M. by leaving a copy of the within with A. D. King.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By A. R. Bracewell, D. S.

Executed this the Apr 16 1963 12:40 P. M. by leaving a copy of the within with N. H. Smith, Jr.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By A. R. Bracewell, D. S.

Executed this the Apr 16 1963 3:15 P. M. by leaving a copy of the within with F. L. Shuttlesworth.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By G. F. Riddle, D. S.

Executed this the Apr 16 1963 10:35 A. M. by leaving a copy of the within with T. L. Fisher.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By A. R. Bracewell, D. S.

Executed this the April 16th 1963 6:31 PM by leaving a copy of the within with Ed Gardner.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By G. T. Hollis, D. S.

Executed this the 4/17 1963 3:43 PM by leaving a copy of the within with Andrew Young.

Melvin Bailey, Sheriff, Jefferson County, Alabama.

[fol. 144] Executed this the Apr 16 1963 10:35 A. M. by leaving a copy of the within with Martin Luther King, Jr.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By A. R. Bracewell, D. S.

Executed this the 4/16, 1963 5:30 P M by leaving a copy of the within with John Thomas Porter.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By H. E. Moore, D. S.

Executed this the 4/17, 1963 3:44 P M by leaving a copy of the within with Wyatt Tee Walker.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By H. E. Moore, D. S.

Executed this the Apr 16 1963 12:30 P. M. by leaving a copy of the within with Aberham Woods, Jr.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By A. R. Bracewell, D. S.

Executed this the 17 day of April, 1963 7:20 AM by leaving a copy of the within with Calvin Woods.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By C. E. Walker, D. S.

[fol. 145]

IN THE CIRCUIT COURT

AMENDMENT TO PETITION RE: CONTEMPT

Comes Petitioner, after leave of Court first had and obtained, and amends the petition heretofore filed on to-wit: April 15, 1963, as follows:

I.

By adding as parties respondent thereto the following:

1. Alabama Christian Movement for Human Rights, an unincorporated association, of which F. L. Shuttlesworth is president, Ed Gardner is vice-president, and Wyatt Tee Walker is information officer.

2. Southern Christian Leadership Conference, of which Martin Luther King, Jr., is president and Wyatt Tee Walker, is information officer.

3. Ennis E. Knight, age 22, 2232 Carlos Avenue, S. W., Birmingham, Alabama.

4. Parnell Walker, alias Darnell Walker, age 27, 522 Alpha Street, South, Birmingham, Alabama.

5. Margaret Askew, age 39, 915 22nd Avenue, South, Birmingham, Alabama.

6. John Germany, age 30, 540 53rd Street, Fairfield, Alabama.

7. David Darnell Darling, age 24, 1011 B-6th Avenue, South, Birmingham, Alabama.

8. Will Bush, age 59, 212 6th Street, Docena, Alabama.

9. Gertrude Grant, age 18, 102 Roosevelt Courtway, S.W., Birmingham, Alabama.

10. Hattie Felder, age 34, 1532 Tombigbee Street, Birmingham, Alabama.

11. Luella Givner, age 18, 432 Kappa Avenue, South, Birmingham, Alabama.

12. Marie M. Pettaway, age 37, 320 2nd Terrace, North, Birmingham, Alabama.

13. Lester Cobb, Jr., age 22, 37 Morris Avenue, Birmingham, Alabama.

14. T. K. Nelson, age over 21, 1656 19th Street, S.W., Birmingham, Alabama.

15. Henry Crawford, age 37, 6415 Washington Boulevard, Birmingham, Alabama.

[fol. 146] 16. Constance Louise Harris, age 32, 169 Apt. J, 5th Avenue, S. W., Birmingham, Alabama.

17. Barbara Jeanette Lawson, age 23, 3343 31st Way, North, Birmingham, Alabama.

18. Elizabeth Jones, age 47, 2617 18th Street, North, Birmingham, Alabama.

19. Gertrude Thompson, age 24, 4615-G, 9th Avenue, North, Birmingham, Alabama.

20. Jimmie Mae Clay, age 33, 2401 22nd Street, North, Birmingham, Alabama.

21. Georgia Lou Thompson, age 31, 2115 Avenue O, Ensley, Birmingham, Alabama.

22. Ruthie M. Johnson, age 34, 205 16th Avenue, North, Birmingham, Alabama.

23. Bernice Royster, age 40, New Castle, Alabama.

24. Fannie Meyers, age 28, 1035 Alice Street, North, Birmingham, Alabama.

25. Rosie Lee Storrs, age 40, 717 23rd Street, South, Birmingham, Alabama.

26. Doris Bogin, age 26, 457 Center Street, North, Birmingham, Alabama.

27. Helen Crawford, age 47, 4231 29th Street, North, Birmingham, Alabama.

28. Susie Wilson, age 43, 1021-B 12th Street, North, Birmingham, Alabama.

29. Beatrice Norman, age 34, 1107 8th Court, North, Birmingham, Alabama.

30. Hattie Pearl Pearson, age 36, 2601 18th Street, North, Birmingham, Alabama.

31. Hattie A. Rush, age 23, 506 8th Avenue, North, Birmingham, Alabama.

32. Samuel James Webster, age 17, Rt. 10, Box 1068, Winona, Jefferson County, Alabama.

33. Cleveland Johnson, age 17, 3536 34th Court, North.
34. Booker Lowe, age 17, 703 New Hill Place, Winona, Jefferson County, Alabama.
35. Nita Jean Powell, age 20, Box 572, Rt. 6, Jefferson County, Alabama.
- [fol. 147] 36. Shirley Moore, age, 20, 1513 Apt. F, 6th Avenue, North, Birmingham, Alabama.
37. Mamie Smith, age 22, Box 95, Sayreton, Alabama.
38. Juliette Norris, age 18, 109 North 15th Court, Birmingham, Alabama.
39. Jonathan Gray, age 30, 301 4th Terrace, North, Birmingham, Alabama.
40. Richard Taylor, age ~~17~~, 1040 1st Street, North, Birmingham, Alabama.

## II.

By adding paragraph number 13 as follows:

13. A. Respondents Ennis E. Knight and Parnell Walker, alias Darnell Walker, with knowledge of said injunction and in violation thereof did participate in and were a part of the unlawful procession upon the public sidewalks or streets of the City of Birmingham as alleged in paragraph 10-B of this petition.

B. Respondents Lester Cobb, Jr., T. K. Nelson, Margaret Askew, John Germany, David Darnell Darling, Will Bush, Hattie Felder, Gertrude Grant, Luella Givner, with knowledge of said injunction and in violation thereof did participate in and were a part of the unlawful procession upon the public streets of the City of Birmingham conducted on Easter Sunday afternoon, April 14, 1963, which said unlawful procession is referred to and more particularly described in paragraph 10-D of this petition.

C. On April 17, 1963, sixteen of said respondents, hereinafter named, with knowledge of said injunction and in violation thereof and in conspiracy with the Alabama Christian Movement for Human Rights, and the officers, leaders and members thereof, did engage in a procession or parade upon the public streets or sidewalks of the City of Birmingham unlawfully and without a permit. Said respondents gathered at Sixteenth Street Baptist Church at 16th Street and 6th Avenue, North. Prior to the beginning of said procession upon the public streets of the City of Birmingham said respondents were informed by members of the Police Department of the City of Birmingham that said proposed procession or parade was unlawful unless a permit had been procured therefor and further was in violation of the injunction. Notwithstanding said prior warning said respondents did wilfully and intentionally violate said injunction by marching in said procession at [fol. 148] said time and place aforesaid. Said respondents are as follows: Henry Crawford, Constance Louise Harris, Barbara Jeanette Lawson, Elizabeth Jones, Gertrude Thompson, Jimmie Mae Clay, Georgia Lou Thompson, Ruthie M. Johnson, Bernice Royster, Fannie Meyers, Rosie Lee Storrs, Doris Bogin, Helen Crawford, Susie Wilson, Beatrice Norman, and Hattie Pearl Pearson.

D. Respondent, Hattie A. Rush, did on the 17th day of April, 1963, with knowledge of and in violation of said injunction and in conspiracy with the Alabama Christian Movement for Human Rights, and the officers, leaders and members thereof, trespass after warning upon the private property of Sears Roebuck and Company at 1531 2nd Avenue, North, Birmingham, Alabama.

E. Respondents, Samuel James Webster, Cleveland Johnson and Booker Dowe did on the 17th day of April, 1963, with knowledge of and in violation of said injunction and in conspiracy with the Alabama Christian Movement for Human Rights, and the officers, leaders and members

thereof, trespass after warning upon the private property of Britts at 200 North 19th Street, Birmingham, Alabama.

F. Respondents, Nita Jean Powell, Shirley Moore, Mamie Smith, Juliette Norris, Jonathan Gray and Richard Taylor, did on the 17th day of April, 1963, with knowledge of and in violation of said injunction and in conspiracy with the Alabama Christian Movement for Human Rights, and the officers, leaders and members thereof, trespass after warning upon the private property of the Post House Restaurant, Second Floor, 2121 Building at 22nd Street and 8th Avenue, North, Birmingham, Alabama, a restaurant operated for tenants and employees of tenants of the 2121 Building; that said respondents were not tenants or employees of tenants of said building.

### III.

By amending the prayer: (a) by including therein the additional respondents hereinabove named, including said unincorporated associations and said individuals; (b) by adding the following to said prayer: "That this amendment be allowed and that the order to show cause be amended so as to incorporate or include said respondents therein and that the original respondents, together with those added by amendment be required to appear and show cause why they should not be adjudged in contempt of this court on the 22nd day of April, 1963; that a guardian ad litem be appointed to represent the minor respondents named as follows: Gertrude Grant, Luella Givner, Samuel James Webster, Cleveland Johnson, Booker Lowe, Nita Jean Powell, Shirley Moore, Juliette Norris and Richard Taylor; that the Sheriff be directed to serve same.

J. M. Breckenridge, Earl McBee, Solicitors for  
Petitioner.

*Duly sworn to by Jamie Moore and W. J. Haley, jurats  
omitted in printing,*

## IN THE CIRCUIT COURT

ORDER RE AMENDMENTS TO PETITION, ORDER AND RULE TO SHOW CAUSE; GRANTING ORDER FOR GUARDIAN AD LITEM, ETC.—April 19, 1963.

The above and foregoing verified amendment to petition heretofore filed in this court on April 15, 1963, having been presented to the Court for order allowing said amendment and for amendment of the order and rule to show cause and for the appointment of a guardian ad litem to represent the minor respondents and for order directing service, and the same having been considered, It Is Hereby Ordered, Adjudged and Decreed by the Court:

1. Said amendment is hereby allowed.
2. Order and Rule to Show Cause of April 15, 1963, is hereby amended to include said unincorporated associations and said individuals named in the above and foregoing amendment, requiring said unincorporated associations and [fol. 150] said individuals to appear before the undersigned on April 22, 1963, at 9:30 A.M., at the place designated in said Order and Rule, then and there to show cause if any they have why they and each of them should not be punished as for a contempt of this Court.
3. That Arthur D. Shores is hereby appointed guardian ad litem for and to represent the minor respondents herein in this proceeding.
4. That the Sheriff of Jefferson County is hereby directed to forthwith serve upon Alabama Christian Movement for Human Rights, Southern Christian Leadership Conference, Ennis E. Knight, Parnell Walker alias Darnell Walker, Margaret Askew, John Germany, David Darnell Darling, Will Bush, Gertrude Grant, Hattie Felder, Luella Givner, Marie M. Pettaway, Lester Cobb, Jr., T. K. Nelson, Henry Crawford, Constance Louise Harris, Barbara Jeanette Lawson, Elizabeth Jones, Gertrude Thompson, Jimmie Mae Clay, Georgia Lou Thompson, Ruthie M. John-

son, Bernice Royster, Fannie Meyers, Rosie Lee Storrs, Doris Bogin, Helen Crawford, Susie Wilson, Beatrice Norman, Hattie Pearl Pearson, Hattie A. Rush, Samuel James Webster, Cleveland Johnson, Booker Lowe, Nita Jean Powell, Shifley Moore, Mamie Smith, Juliette Norris, Jonathan Gray and Richard Taylor, a copy of this Order, a copy of the original petition filed in this Court on April 15, 1963, a copy of the Order and Rule To Show Cause rendered and issued on that date and a copy of this amendment and make due return thereof.

Done and Ordered this 19th day of April, 1963.

W. A. Jenkins, Jr., Circuit Judge—In Equity Sitting.

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IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT  
OF ALABAMA—IN EQUITY

No. 130-173

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CITY OF BIRMINGHAM, a municipal corporation of the  
State of Alabama, Petitioner,

vs.

WYATT TEE WALKER; RALPH ABERNATHY; A. D. KING; ED GARDNER; CALVIN WOODS; ABERHAM WOODS, JR.; ANDREW YOUNG; JOHNNY LOUIS PALMER; J. W. HAYES; N. H. SMITH, JR.; JOHN THOMAS PORTER, T. L. FISHER; JAMES BEVELS; F. L. SHUTTLESWORTH, MARTIN LUTHER KING, JR., JOHN DOE AND RICHARD ROE, whose names are otherwise unknown and who will be added as parties respondent, when ascertained.

[fol. 151]

## PETITION FOR ADJUDICATION IN CONTEMPT

To Any of the Honorable Judges of Said Court, In Equity Sitting:

Comes the City of Birmingham, a municipal corporation organized under and by virtue of the laws of the State of Alabama, and avers as follows:

1. Petitioner ~~is~~ a municipal corporation organized and existing under the laws of the State of Alabama.

2. Respondents Wyatt Tee Walker, Ralph Abernathy, James Bevels, Andrew Young, F. L. Shuttlesworth and Martin Luther King, Jr., are each nonresidents of the State of Alabama. Wyatt Tee Walker, Ralph Abernathy, and Martin Luther King, Jr., reside in Atlanta, Georgia. F. L. Shuttlesworth resides in Cincinnati, Ohio. Andrew Young resides in Tennessee and James Bevels in Mississippi. All of said respondents except Shuttlesworth are presently temporarily staying at the A. G. Gaston Motel at 1510 5th Avenue, North, Birmingham, Alabama. F. L. Shuttlesworth is temporarily staying at 3164 29th Avenue, North, Birmingham, Alabama. Aberham Woods, Jr., resides at 125 Kappa Avenue, South, Birmingham, Alabama; Calvin Woods at 1240 3rd Street, North, Birmingham, Alabama; Johnny Louis Palmer at 237 South 8th Avenue, Birmingham, Alabama; J. W. Hayes at 1818 19th Street, Ensley; Ed Gardner at 6207 3rd Avenue, North, Birmingham, Alabama; N. H. Smith, Jr., at 1700 1st Street, South, Birmingham, Alabama; A. D. King at 712 12th Street, Ensley, Alabama; John Thomas Porter, 1531 6th Avenue, South, Birmingham, Alabama; and T. L. Fisher, #10 16th Avenue, West, Birmingham, Alabama.

3. On, to-wit: the 10th day of April, 1963, bill of complaint was filed by petitioner herein naming as parties respondent, among others, each of the parties respondent to this petition, with the exception of Ed Gardner, J. W.

Hayes, James Bevels, Andrew Young and T. L. Fisher. Said cause is numbered 130-173.

4. On verified allegations and the affidavits of Captain G. V. Evans and Captain George Wall order was entered on the 10th day of April, 1963, at 9 o'clock P.M., issuing the temporary injunction against all respondents named in said bill of complaint (including among others, Alabama Christian Movement for Human Rights) their agents, members, employees, servants, followers, attorneys, successors and all other persons in active concert or participation with the respondents and all persons having notice of said order from "engaging in, sponsoring, inciting, or encouraging [fol. 152] ing mass street parades or mass processions or like demonstrations without a permit, trespass on private property after being warned to leave the premises by the owner or person in possession of said private property, congregating on the street or public places into mobs, and unlawfully picketing business establishments or public buildings in the City of Birmingham, Jefferson County, State of Alabama or performing acts calculated to cause breaches of the peace in the City of Birmingham, Jefferson County, in the State of Alabama or from conspiring to engage in unlawful street parades, unlawful processions, unlawful demonstrations, unlawful boycotts, unlawful trespasses, and unlawful picketing or other like unlawful conduct or from violating the ordinances of the City of Birmingham and the Statutes of the State of Alabama or from doing any acts designed to consummate conspiracies to engage in said unlawful acts of parading, demonstrating, boycotting, trespassing and picketing or other unlawful acts, or from engaging in acts and conduct customarily known as "kneel-ins" in churches in violation of the wishes and desires of said churches. Petitioner attaches hereto a true and correct copy of said bill of complaint and said order marked Exhibits A and B, respectively and hereby makes the same a part hereof as if fully set out herein with leave of reference.

5. The said Wyatt Tee Walker, Ralph Abernathy, F. L. Shuttlesworth, Martin Luther King, Jr. and A. D. King, Aberham Woods, Jr. and Calvin Woods were duly served with writs of injunction issued pursuant to said order on, to-wit: the night of April 10 or morning of April 11, 1963. All matters and things which are hereinafter alleged as having been done by each of said respondents were done or committed by each of said respondents, subsequent to the service of said injunction upon each of them who were specifically made parties and as to those respondents hereto who were not made parties to said cause numbered 130-173, the same were done and committed by them with knowledge of the issuance of said injunction.

6. On the 11th day of April, 1963, at a press conference to which representatives of the local and national press, radio and television were invited the said respondents Walker, Abernathy, Shuttlesworth and Martin Luther King, Jr., issued a written news release at approximately 12 Noon on said date in which among other things they stated: "We cannot in all good conscience obey such an injunction," [fol. 153] referring to the writ of injunction issued pursuant to the above mentioned order. A photostatic copy of said news release is attached hereto and made a part hereof as if fully set out herein, marked Exhibit "C". At said time in addition to the written press release, the said King, Shuttlesworth, Abernathy, and Walker verbally stated that it was their intention to seek a dissolution of said injunction but they did not intend to obey the same and in substance stated that they would defy and violate the injunction and continue their demonstrations and activities or movement "today, tomorrow, Saturday, Sunday, Monday, and on through." All of such statements were cheered and approved by all of said respondents last above named and others who were present on said occasion, including respondent, A. D. King. At said press conference announcement was made by one or more of said respondents hereto inviting all present to attend a rally or meeting to be held on that night, April 11, at 6 P.M., at Sixth Avenue Baptist Church.

7. Said meeting or rally as announced was held on Thursday night, April 11, at the Negro Baptist church above mentioned. Those present were asked to pay their dues of \$1.00 as members of Alabama Christian Movement For Human Rights. Among other things said and done at said meeting respondent Martin Luther King, Jr., made a statement in substance that they were going to have a parade, march, or procession at high noon on Good Friday, April 12th, and that he would go to jail on that date and further stated in substance that: "Injunction or no injunction, we're going to march. Here in Birmingham we have reached the point of no return and now authorities will know that an injunction can't stop us." At said meeting said respondent and others of said respondents solicited volunteers to engage in said unlawful march or procession upon the streets and sidewalks of the City of Birmingham without a permit as required by City Ordinance and in violation of said injunction. Respondents Abernathy, Shuttlesworth and A. D. King also announced at said meeting they would participate in such unlawful march or procession and would go to jail. One or more of said respondents openly boasted at said meeting that the injunction had been violated that day, Thursday, April 11. Petitioner avers that said meeting was in truth and fact a meeting of the Alabama Christian Movement for Human Rights and that similar meetings were held by said organization on Friday and Saturday nights, April 12th and April 13th, [fol. 154] 1963, at different Negro churches.

8. At said meeting on Friday night, April 12th, respondent, James Bevels, spoke to the meeting in effect belittling and bemeaning Commissioner of Public Safety, Eugene Connor, and the Birmingham Police Department and urging all Negroes to join in the "movement". Respondent, Wyatt Tee Walker, called for volunteers to go to jail and also made a call for about a dozen or two volunteers willing to die for the cause.

9. At said meeting on Saturday night, April 13, respondent Wyatt Tee Walker, called for volunteers to engage in an unlawful procession or march upon the sidewalks and streets of Birmingham without a permit and in violation of said injunction, on Easter Sunday, April 14th, 1963. Respondents, Ed Gardner, A. D. King, Jr., Calvin Woods, Abraham Woods, Jr., J. W. Hayes, Johnny Palmer and Andrew Young participated in soliciting volunteers of all ages, from the first grade up. Some of said respondents at said time also called for volunteers to call other Negroes to assemble as many Negroes as possible at the time of said march or procession on Easter Sunday.

10. Said injunction has been defied and openly violated by respondents hereto and others in conspiracy and concert of action with them each day since the same was issued in addition to those matters and things hereinabove alleged, among other things as follows:

A. On April 11, 1963, at about 2:30 P.M., a procession or parade or illegal march was conducted on the streets of Birmingham without a permit in which one or more of those who participated were parties respondent to said cause #130-173. On said date at 3:30 P.M., and at 3:55 P.M., respectively, two other processions or parades without a permit were conducted upon the public streets of the City of Birmingham.

B. April 12, 1963, in response to the solicitation made at said meeting hereinabove alleged which was held on April 11, 1963, an unlawful procession or march upon the City Hall upon the streets and sidewalks of Birmingham, Alabama, was conducted without a permit, in which approximately fifty Negroes were engaged. This procession was led by respondents, Martin Luther King, Jr., and Ralph Abernathy. Respondent, Shuttlesworth, also participated therein. On said occasion a large mob of Negroes, of approximately a thousand, was gathered around Zion Hill Missionary Baptist Church, at 1414 6th Avenue, North,

[fol. 155] Birmingham, Alabama, blocking the sidewalk; said mob moved along the side, in front and behind those engaged in said procession.

C. On the 13th day of April, 1963, a group of, to-wit: six Negroes trespassed upon the private property of Atlantic Mills Thrift Center, a large retail store at 1216 8th Avenue, North, and were arrested upon complaint of the manager or person in charge of said store for trespass after warning. Said trespassers upon said private property picketed or walked upon the private property owned or leased by said store or its owner carrying picket signs reading in substance, "Birmingham Merchants Unfair" and "If Khrushchev can Eat Here, Why Can't We", and of similar nature. Said picketers, trespassers or most of them attended said meeting held on April 13, hereinabove mentioned.

D. On Easter Sunday afternoon, in response to the said solicitations made at said meeting on Saturday night, April 13th, as hereinabove alleged and as a part of said conspiracy and concert of action, an unruly mob of chanting, dancing, hopping Negroes consisting of several thousand assembled in and around Thurgood C.M.E. Church at 11th Street and 7th Avenue, North. An unlawful procession consisting of several hundred Negroes formed at said church and proceeded to parade or march upon the public sidewalks and streets of the City of Birmingham without a permit, unlawfully and in violation of City Ordinance and in violation of said injunction. Said unruly mob followed along side, behind and in front of said procession and persons forming a part of said mob threw rocks, brickbats or other dangerous objects at members of the Police Department of the City of Birmingham engaged in arresting said members of said procession. A motor vehicle of the Police Department was struck by a rock or brickbat or other hard object and was seriously damaged. Mr. James Ware, a newspaper photographer employed by Birmingham Post-

Herald was struck and injured by a rock or other dangerous object. Other persons, including police officers, were narrowly missed by said rocks or other dangerous objects which were thrown on said occasion. One officer of the said Police Department was injured by one of said paraders or marchers resisting arrest in the tense atmosphere created by said mob.

11. Petitioner avers that respondents A. D. King, N. H. Smith, Jr., J. W. Hayes, John Thomas Porter, all of whom were named respondents in said cause number 130-173, and who had previously been served with said injunction par-[fol. 156] ticipated in said procession, parade or march. Respondent T. L. Fisher participated therein with knowledge of said injunction.

12. Petitioner avers that the acts and things hereinabove in paragraphs 6, 7, 8, 9, 10 and 11 alleged constitute an open, flagrant, wilful, malicious, intentional violation of said injunction and a flaunting of the due process of the law and open defiance of this Court. Petitioner further avers that the acts and conduct and statements of said respondents, Wyatt Tee Walker and F. L. Shuttlesworth, who are public information officer and president respectively of the Alabama Christian Movement for Human Rights; Ed Gardner, who is vice president of said organization; Martin Luther King, Jr., president and Ralph Abernathy leader of Southern Christian Leadership Conference and, in particular the press release and press statements made as alleged hereinabove in paragraph 6 and those statements made at said meeting April 11 as alleged in paragraph 7, in substance and effect that said respondents Shuttlesworth, Abernathy, Walker and Martin Luther King would not recognize and would not obey said injunction irrespective of whether same were dissolved or not and would continue to commit the unlawful acts restrained and prohibited by said injunction, injunction or no injunction, constitutes an open, defiant repeated and continuing day by contempt of this court and contempt of said injunc-

tion, and said contempt is continued and repeated each day until said respondents shall publicly recant or retract same by announcement by said respondents so recanting or retracting same with similar or equal press, radio and T. V. coverage as when said statements were made.

Wherefore, petitioners pray that this Court will cause a rule nisi to be issued to the respondents, Wyatt Tee Walker, Ralph Abernathy, F. L. Shuttlesworth, Martin Luther King, Jr., A. D. King, Ed Gardner, Calvin Woods, Aberham Woods, Jr., Andrew Young, Johnny Louis Palmer, J. W. Hayes, N. H. Smith, Jr., John Thomas Porter, T. L. Fisher, James Bevels, John Doe and Richard Roe, whose names are otherwise unknown and who will be added as parties respondent, when ascertained, separately and severally and that they and each of them be required to appear before this Court on such date and at such hour as may be set by the Court, then and there to show cause, if any there be, why they and each of them should not be adjudged [fol. 157] and punished as for a contempt of this Honorable Court; and further why each of said respondents, Wyatt Tee Walker, Ralph Abernathy, F. L. Shuttlesworth and Martin Luther King, Jr., shall not continue to be adjudged in contempt of this court and from time to time punished therefor unless they shall publicly retract or recant the statements made publicly at press conferences and mass meeting on April 11, 1963, of their intention to violate the injunction described in the foregoing petition.

J. M. Breckenridge, Earl McBee, Solicitors for Petitioner.

State of Alabama  
Jefferson County

Personally appeared before me, the undersigned authority in and for said state and county, Jamie Moore and W. J. Haley who, upon being by me first duly sworn, deposes and says that they are Chief of Police and Inspector of Police of City of Birmingham, respectively, and that as such they are authorized to make this affidavit and that

they have read the above and foregoing petition and the matters and things alleged therein are true and correct as alleged.

Jamie Moore, W. J. Haley, Affiants.

Subscribed to and sworn to before me, this 15th day of April, 1963.

Earl McBee, Notary Public, Jefferson County, Alabama.

[fol. 170]

IN THE CIRCUIT COURT

ORDER AND RULE TO SHOW CAUSE AND RETURNS THEREON

This day came the Petitioner, City of Birmingham, a municipal corporation, and filed herein a petition verified by Jamie Moore and W. J. Haley, praying for an order upon Wyatt Tee Walker, Ralph Abernathy, A. D. King, Ed. Gardner, Calvin Woods, Andrew Young, Jr., Johnny Louis Palmer, J. W. Hayes, N. H. Smith, Jr., John Thomas Porter, T. L. Fisher, James Bevels, F. L. Shuttlesworth, Martin Luther King, Jr., and respondents John Doe and Richard Roe, whose names are otherwise unknown to petitioner but who will be correctly inserted by amendment when ascertained, to show cause why they, and each of [fol. 171] them, should not be punished as for contempt of this Honorable Court; and further, why each of said respondents Wyatt Tee Walker, Ralph Abernathy, F. L. Shuttlesworth and Martin Luther King, Jr., shall not continue to be adjudged in contempt of this Court and from time to time punished therefor unless they shall publicly retract or recant the statements made publicly at press conferences and mass meetings on April 11, 1963, of their intention to violate the injunction described in the foregoing petition. A true and correct copy of said certified petition is set out above and now upon consideration of same, it is

Ordered, Adjudged and Decreed by the Court:

1. That Wyatt Tee Walker, Ralph Abernathy, A. D. King, Ed Gardner, Calvin Woods, Aberham Woods, Jr., Andrew Young, Johnny Louis Palmer, J. W. Hayes, N. H. Smith, Jr., John Thomas Porter, T. L. Fisher, James Bevels, F. L. Shuttlesworth, Martin Luther King, Jr., appear before the undersigned in his courtroom at the Jefferson County Courthouse in the City of Birmingham on the 22 day of April, 1963, at 9:30 o'clock, A.M., then and there to show cause, if any they have, why they and each of them, should not be punished as for a contempt of this Court and as to respondents Wyatt Tee Walker, Ralph Abernathy, F. L. Shuttlesworth and Martin Luther King, Jr. why they shall not continue to be adjudged in contempt of this Court and from time to time punished therefor unless they shall publicly retract or recant the statements made publicly at press conferences and mass meeting on April 11, 1963, of their intention to violate the injunction described in the foregoing petition, for and on account of the matters and things set out in the foregoing verified petition.

2. That the Sheriff of Jefferson County be and he hereby is directed forthwith to serve upon the said Wyatt Tee Walker, Ralph Abernathy, A. D. King, Ed Gardner, Calvin Woods, Aberham Woods, Jr., Andrew Young, Johnny Louis Palmer, J. W. Hayes, N. H. Smith, Jr., John Thomas Porter, T. L. Fisher, James Bevels, F. L. Shuttlesworth, Martin Luther King, Jr., and respondents John Doe and Richard Roe, whose names are otherwise unknown to complainant but who will be correctly inserted by amendment when ascertained, a copy of this Order and the foregoing petition and make due return thereof.

Done and Ordered, this the 15 day of April, 1963, at  
..... M.

W. A. Jenkins, Jr., Circuit Judge in Equity, Sitting.  
Filed in Office April 19, 1963.

[fol. 172] Executed this Apr 19 1963 4:05 pm by leaving a copy of the within with Parnell Walker at Darnell.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By Reeves, D.S.

Executed this April 19 1963 7:05 pm by leaving a copy of the within with Lester Cobb, Jr.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By Reeves, D.S.

Executed this April 19 1963 4:10 pm by leaving a copy of the within with Luella Ginner.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By Reeves, D.S.

Executed this the 19 day of April 1963 by leaving a copy of the within with Will Bush.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By A. Z. Glaze, D.S.

Executed This April 19 1963 4:20 pm by leaving a copy of the within with Constance Louise Harris.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By Reeves, D.S.

Executed this April 19 1963 3:45 pm by leaving a copy of the within with Hattie Felder.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By G. T. Hollis, D. S.

Executed this Apr 19 1963 4:25 pm by leaving a copy of the within with Gertrude Grant.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By Reeves, D.S.

Executed this the 19 day of April, 1963, by leaving a copy of the within with Bernice Royster.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By Harry Freeman, D.S.

Executed this Apr 19 1963 5:10 pm by leaving a copy of the within with T. K. Nelson.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By Reeves, D.S.

Executed this April 19 1963 1:00 pm City Jail by leaving a copy of the within with Jonathan Gray.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By W. H. Hogan, D.S.

[fol. 173] Executed this April 19 1963 1:00 pm City Jail by leaving a copy of the within with Nita Jean Powell.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By W. H. Hogan, D.S.

Executed this Apr 19 1963 3:28 pm by leaving a copy of the within with Elizabeth Jones.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By G. F. Riddle, D.S.

Executed this Apr 19 1963 1:00 pm City Jail by leaving a copy of the within with Cleveland Johnson.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By W. H. Hogan, D.S.

Executed this Apr 19 1963 1:00 p.m. City Jail by leaving a copy of the within with Hattie A. Rush.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By W. H. Hogan, D.S.

Executed this Apr 19 1963 by leaving a copy of the within with Jimmie Mae Clay.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By G. F. Riddle, D.S.

Executed this Apr 19 1963 1:00 pm City Jail by leaving a copy of the within with Martin Luther King, Jr., Pres. Sou. Christian Leadership Conf.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By W. H. Hogan, D.S.

Executed this Apr 19 1963 1:00 p.m. City Jail by leaving a copy of the within with Mamie Smith.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By W. H. Hogan, D.S.

Executed this Apr 19 1963 3:58 pm by leaving a copy of the within with Barbara Jeanette Lawson.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By G. F. Riddle, D.S.

Executed this Apr 19 1963 1:00 pm City Jail by leaving a copy of the within with Booker Lowe.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By W. H. Hogan, D.S.

[fol. 174] Executed this Apr 19 1963 1:00 pm City Jail by leaving a copy of the within with Samuel James Webster.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By W. H. Hogan, D.S.

Executed this Apr 19 1963 4:11 PM by leaving a copy of the within with Helen Crawford.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By G. F. Riddle, D.S.

Executed This Apr 19 1963 1:00 pm City Jail by leaving a copy of the within with Shirley Moore.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By W. H. Hogan, D.S.

Executed this Apr 19 1963 3:26 PM by leaving a copy of the within with Hattie Pearl Pearson.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By G. F. Riddle, D.S.

Executed this Apr 19 1963 5:30 P.M. by leaving a copy of the within with Susie Wilson.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By G. F. Riddle, D.S.

Executed this Apr 22 1963 1:30 p.m. by leaving a copy of the within with Margaret Askew.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By A. R. Bracewell, D.S.

F. L. Shuttlesworth Not Found In Jefferson County Apr 22 1963.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By H. E. Moore, D.S.

Rosie Lee Storrs Not Found in Jefferson County this Apr 22 1963.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By H. E. Moore, D.S.

Executed this Apr 22 1963 12:45 P.M. by leaving a copy of the within with David Darnell Darling.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By A. R. Bracewell, D.S.

Gertrude Thompson Not Found in Jefferson County this Apr 22 1963.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By W. A. Adams, D.S.

[fol. 175] Executed this Apr 19 1963 3:32 pm by leaving a copy of the within with Arthur Shores atty.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By H. E. Moore, D.S.

Henry Crawford Not Found in Jefferson County this Apr 23 1963.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By W. A. Adams, D.S.

Beatrice Norman Not Found in Jefferson County Apr 23 1963.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By J. L. Cochran, D.S.

John Germany Not Found in Jefferson County Apr 23 1963.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By J. L. Cochran, D.S.

Richard Taylor Not Found in Jefferson County Apr 23 1963.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By J. L. Cochran, D.S.

Ruthie M. Johnson Not Found in Jefferson County this Apr 23 1963.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By J. L. Cochran, D.S.

Executed this May 2 1963 by leaving a copy of the within with Henry Crawford 12:30 PM.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By Walter Ward, D.S.

Executed this 5:48 P.M. Apr 19, 1963, by leaving a copy of the within with Georgia Lou Thompson.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By J. L. Cochran, D.S.

Executed this 3:20 P.M. Apr 20 1963 by leaving a copy of the within with Doris Bogin.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By J. L. Cochran, D.S.

Executed this April 20 1963 3:54 p.m. by leaving a copy of the within with Juliette Norris.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By J. L. Cochran, D.S.

[fol. 176] Executed this Apr 19 1963 6:17 P.M. by leaving a copy of the within with Marie M. Pettaway.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By J. L. Cochran, D.S.

Executed this Apr 19 1963 6:45 P.M. by leaving a copy of the within with Fannie Meyers.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By J. L. Cochran, D.S.

Executed this Apr 20 1963 12:05 A.M. by leaving a copy of the within with Ennis E. Knight.

Melvin Bailey, Sheriff, Jefferson County, Alabama,  
By Reeves, D.S.

## IN THE CIRCUIT COURT

## DEMURRER OF RESPONDENTS—Filed April 19, 1963

Now Comes the respondents, Wyatt Tee Walker, et al., individually and as members of the Alabama Christian Movement For Human Rights, Inc., and the Southern Christian Leadership Conference, Inc., and demur to the petition for peremptory or temporary injunction filed herein, and to each and every paragraph thereof, and as grounds of such demurrer sets down and assigns, separately and severally, to each and every paragraph thereof, the following separate and several matters.

1. For that it affirmatively appears from the allegations and averments of the petition that there is no equity in the petition.

2. For that it affirmatively appears from the allegations and averments of the petition that no jurisdiction for the complaint was alleged.

3. For that it affirmatively appears from the allegations and averments of said petition that an adequate remedy at law exists for each and every act or injury complained of in the said petition.

4. For that it affirmatively appears from the allegations and averments of said petition that no irreparably injury will be occasioned any person because of or arising out of the acts complained of in the said petition.

5. For that it affirmatively appears from the allegations and averments of said petition that the said petition contains no averments of any injuries occasioned by any person by these respondents.

[fol. 177] 6. For that it affirmatively appears from the allegations and averments of said petition that the said temporary injunction is an artifice to enjoin the doing of criminal acts for which there is an adequate remedy at law.

7. For that it affirmatively appears from the allegations and averments of said petition that the purpose of the injunction is to make criminal the exercise of rights guaranteed to these respondents under the Constitution and laws of the State of Alabama and of the United States of America.

8. For that it affirmatively appears from the allegations and averments of said petition that the effect of the injunction would be to make criminal the exercise of rights guaranteed these respondents under the Constitution and laws of the State of Alabama and of the United States of America.

9. For that it affirmatively appears from the allegations and averments of said petition that the allegations of the said petitioner are mere conclusions of the pleader.

10. For that under the provisions of the First and Fourteenth Amendment to the Constitution of the United States of America, and the Constitution of the State of Alabama, these respondents are entitled to the rights of freedom of assembly, freedom of speech, freedom of religion and freedom of petition, each of which such rights is either infringed upon or denied by the injunction heretofore issued herein.

11. For that it affirmatively appears from the allegations and averments of said petition that the injunction heretofore issued herein causes or results in a denial to these respondents of rights of equal protection of the laws and due process of law guaranteed under the Fourteenth Amendment to the Constitution of the United States of America.

12. For that there is no specification of facts which give rise to acts of boycotting and picketing being unlawful, such averments being mere conclusions of the pleader.

13. For that it affirmatively appears from the allegations and averments of said petition that the phrase "sit-in demonstrations" and the phrase "kneel-in demonstrations"

have neither meaning nor definition in law or equity and are not susceptible to interpretation other than in the mind of the pleader.

[fol. 178] 14. For that it affirmatively appears from the allegations and averments of said petition that the phrase "mass street parades" or "mass processions" connotes a constitutional demonstration, the right to which is assured and guaranteed this respondent by the Constitution of the State of Alabama and the First and Fourteenth Amendments to the Constitution of the United States of America.

15. For that it affirmatively appears from the allegations and averments of said petition that the remedy sought in said petition would result in a court order perpetuating customs and practices of racial segregation in violation of the Constitution of the United States of America.

Orzell Billingsley, Jr., 1630 North 4th Avenue, Birmingham, Alabama;

Arthur D. Shores, 1527 North 5th Avenue, Birmingham, Alabama;

Leroy D. Clark, Jack Greenberg, Norman C. Amaker, 10 Columbus Circle, New York, New York;

Attorneys for Respondents.

Filed in Office April 19, 1963.

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#### IN THE CIRCUIT COURT

ANSWER—Filed April 19, 1963

Now Comes Wyatt Tee Walker, et al., individually, and as members of the Alabama Christian Movement for Human Rights, Inc. and the Southern Christian Leadership Conference, Inc., respondents, in the above styled cause, and for answer to the Bill of Complaint heretofore filed in said cause alleged as follows:

1. Respondents admit the allegations of paragraph 1 of the Bill of Complaint.

2. Respondents admit the allegations of paragraph 2, but deny that the Alabama Christian Movement for Human Rights, Inc. or the Southern Christian Leadership Conference, Inc. are unincorporated organizations, said organizations being duly incorporated under the laws of the States of Alabama and Georgia, respectively.

3. Respondents deny the allegations of paragraph 3 of the Bill of Complaint and aver that respondents have encouraged and participated in:

[fol. 179] (a) Request for service in various stores in the City of Birmingham on a racially integrated basis. Proprietors were required to refuse such services by Section 369 (1944) of the Birmingham City Ordinance which requires racial segregation contrary to the Fourteenth Amendment to the United States Constitution.

(b) Persons walking two abreast in a quiet and orderly fashion on public sidewalks observing all traffic regulations with prior notice given to police authorities with the sole purpose of making a peaceful protest against racial discrimination.

(c) Small groups of persons peacefully picketing state enforced racial segregation in publicly and privately owned facilities by walking in an orderly manner upon the sidewalks near the premises carrying signs appropriately describing their grievances.

4. Respondents deny the allegations of paragraph 4—  
(a), (b).

5. Respondents deny the allegations of paragraph 4 (c) except that as regards allegations concerning the actions of "a mob" on April 7, 1963 which is alleged to have gathered when respondents conducted their orderly demonstrations, respondents deny knowledge or information sufficient to form a belief as to the truth or falsity thereof.

6. Respondents deny the allegations of paragraphs 5, 6, and 7.

7. Respondents deny the allegations of paragraph 8 and aver that complainant has adequate remedy at law.

Orzell Billingsley, Jr., 1630 Fourth Avenue North,  
Birmingham, Alabama;

Arthur D. Shores, 1527 Fifth Avenue North, Bir-  
mingham, Alabama;

Leroy D. Clark, Norman C. Amaker, Jack Green-  
berg, 10 Columbus Circle, New York 19, New York;

Attorneys for Plaintiffs.

Service will be made by mail on the Honorable J. M.  
Breckenridge and Earl McBee on April 19, 1963.

Leroy D. Clark

Filed in Office April 19, 1963.

[fol. 180]

# IN THE CIRCUIT COURT

PLEA IN ABATEMENT—Filed April 22, 1963

Come the Respondents, Alabama Christian Movement for Human Rights and Southern Christian Leadership Conference in the above-entitled cause, appearing specially and only for the purpose of filing this plea, and say that the City of Birmingham, a Municipal Corporation of the State of Alabama, Complainant in this cause, ought not to have and maintain its action for the respondents say separately and severally as follows to wit:

1. That the Alabama Christian Movement for Human Rights is and at all times mentioned in the Bill of Complaint was a Corporation organized and existing under the laws of the State of Alabama, with its principal place of business at Birmingham, Alabama; that it is not now and at no time mentioned in the Bill of Complaint was an unincorporated association.

2. That the Southern Christian Leadership Conference is and at all times mentioned in the Bill of Complaint was a Corporation organized and existing under the laws of the State of Georgia with its principal place of business at Atlanta, Georgia; that it is not now and at no time mentioned in the Bill of Complaint was an unincorporated association.

Wherefore respondents say that this suit should be abated as to them and should not be allowed to proceed.

Arthur D. Shores, 1527 Fifth Avenue N., Birmingham, Alabama.

Orzell Billingsley, Jr., 1630 Fourth Avenue N., Birmingham, Alabama.

Norman C. Amaker, Leroy D. Clark, Jack Greenberg, Constance Baker Motley, 10 Columbus Circle, New York 19, N. Y.

*Duly sworn to by Fred L. Shuttlesworth and Martin Luther King, jurats omitted in printing.*

[fol. 181]

#### IN THE CIRCUIT COURT

#### MOTION TO DISCHARGE AND VACATE ORDER AND RULE TO SHOW CAUSE—Filed April 22, 1963

Now come the respondents, Wyatt Tee Walker, et al., individually and as members of the Alabama Christian Movement for Human Rights Inc., and/or the Southern Christian Leadership Conference, Inc., and move this Court to discharge and vacate the order and rule to show cause, if any they have, why they and each of them, should not be punished as for a contempt of this Court entered herein on April 15, 1963 together with the amendment thereto entered herein on April 19, 1963 and as grounds therefor show the following:

1. That the order and rule to show cause was improperly and unlawfully issued herein because nowhere does it ap-

pear either in the original bill of complaint nor in the petition for order and rule to show cause or amendment thereto that the City of Birmingham was properly authorized to bring this suit.

2. That the order and rule to show cause was issued upon an insufficient petition.

[fol. 182] 3. That the order and rule to show cause and amendment thereto was improvidently issued because respondents have not violated the terms of the injunction previously issued in this cause on April 10, 1963 because said injunction by its terms prohibits these respondents from inciting or encouraging others or conspiring to or engaging in *unlawful* conduct specified therein, whereas the conduct of respondents has been *lawful* conduct protected by the First and Fourteenth Amendments to the Constitution of the United States, viz., the due process and equal protection clauses thereof, and by Article 1, Section 25 of the Alabama Constitution.

4. That the petition upon which the order and rule to show cause was issued and the amendment thereto does not affirmatively show that respondents have engaged in any unlawful conduct but rather shows that respondents have engaged in conduct protected by the First Amendment to the Constitution of the United States, the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States and by Article I, Section 25 of the Alabama Constitution.

5. That the order to show cause was improvidently and unlawfully issued as to the Alabama Christian Movement for Human Rights and the Southern Christian Leadership Conference because they are improperly named in the bill of complaint herein as unincorporated associations while, in fact they are corporations organized under the laws of Alabama and Georgia respectively.

Arthur D. Shores, 1527 Fifth Avenue N., Birmingham, Alabama.

Orzell Billingsley, Jr., 1630 Fourth Avenue N., Birmingham, Alabama.

Norman C. Amaker, Leroy D. Clark, Jack Greenberg, Constance Baker Motley, 10 Columbus Circle, New York 19, N. Y.

*Duly sworn to by Arthur D. Shores, jurat omitted in printing.*

[fol. 183]

IN THE CIRCUIT COURT

MOTION FOR SEVERANCE—Filed April 22, 1963

Come now respondents, and move this Court to sever and try separately the charges of criminal contempt and the charges of civil contempt brought on by complainant's prayer for a rule nisi herein and this Court's order and rule to show cause entered in response thereto. As reason, therefor, respondents aver that in the trial of the issue of criminal contempt they are entitled to protection secured by the Constitution and Laws of the State of Alabama and the Constitution and Laws of the United States not available in the trial of a civil contempt, and that the trial of civil and criminal contempt in a single hearing will deprive respondents of these greater protections of law. Moreover, the issues of law, in fact, in civil contempt are sufficiently different from those in criminal contempt, that to try both together in a single hearing will so confuse the record on the legal issues as to deny respondents protection secured by the Constitution and Laws of the State of Alabama and the Constitution and Laws of the United States.

Arthur D. Shores, 1527 Fifth Avenue N., Birmingham, Alabama;

Orzell Billingsley, Jr., 1630 Fourth Avenue N., Birmingham, Alabama;

Norman C. Amaker, Leroy D. Clark, Jack Greenberg, Constance Baker Motley, 10 Columbus Circle, New York 19, New York;

Attorneys for Plaintiffs.

Filed in Open Court April 22, 1963.

[fol. 184]

IN THE CIRCUIT COURT

ANSWER TO PETITION AND AMENDED PETITION FOR ORDER AND  
RULE TO SHOW CAUSE—Filed April 22, 1963

1. Respondents admit the allegations of paragraph 1.
2. Respondents admit the allegations of paragraph 2 *except* the allegations that Andrew Young resides in Tennessee and F. L. Shuttlesworth is temporarily staying at 3164 29th Avenue, North, Birmingham, Alabama both of which are denied.
3. Respondents admit the allegations of paragraph 3.
4. Respondents admit the allegations of paragraph 4.
5. Respondents deny the allegations of paragraph 5 and demand strict proof thereof.
6. Respondents neither admit nor deny the allegations of paragraph 6.
7. Respondents neither admit nor deny the allegations of paragraph 7.
8. Respondents neither admit nor deny the allegations of paragraph 8.
9. Respondents neither admit nor deny the allegations of paragraph 9.
10. Respondents deny the allegations of paragraph 10 to the effect that they have defied and violated the injunction herein and as to paragraphs 10A through 10D neither

admit nor deny the allegation therein and the amendments to paragraph 10B and 10D contained in paragraph 13 of the amended petition and demand proof of same.

11. Respondents neither admit nor deny the allegations of paragraph 11.

12. Respondents deny the allegations of paragraph 12 and demand strict proof thereof.

13. Respondents neither admit nor deny the allegations of paragraph 13C of the amended petition, deny paragraphs 13D, 13E and 13F of the amended petition and demand strict proof thereof.

14. As further answer to the petition and amended petition for order and rule to show cause, respondents aver that they have only engaged in *lawful* conduct protected by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, the First Amendment to the Constitution of the United States and Article I, Section 25 of the Alabama Constitution, to wit:

a) Walking two abreast in orderly manner on the public sidewalks of Birmingham observing all traffic regulations with prior notice having been given to city officials in order to peacefully express their protest against continuing racial discrimination in Birmingham.

b) Peaceful picketing in small groups and in orderly manner of publicly and privately owned facilities.

[fol. 185] c) Requesting service in privately owned stores open to the general public in exercise of their right to equal protection of the laws and due process of law which are denied by Section 369 of the 1944 General City Code of Birmingham.

Arthur D. Shores, 1527 Fifth Avenue N., Birmingham, Alabama.

Orzell Billingsley, Jr., 1630 Fourth Avenue N., Birmingham, Alabama.

Norman C. Amaker, Leroy D. Clark, Jack Greenberg, Constance Baker Motley, 10 Columbus Circle, New York 19, N. Y.

*Duly sworn to by Arthur D. Shores, jurat omitted in printing.*

IN THE CIRCUIT COURT

COMMISSIONER'S STATEMENT ON APPEARANCE

Dominick, Fletcher, Taylor & Yeilding  
Attorneys at Law  
927-934 Brown-Marx Building  
Birmingham 3, Alabama

Telephone Fairfax 2-0654

Frank Dominick  
Walter Fletcher  
George Peach Taylor  
Newman Manly Yeilding, Jr.  
J. M. Gillespy (1890-1955)

April 22, 1963

Judge W. A. Jenkins, Jr.  
Jefferson County Courthouse  
Birmingham, Alabama

Re: City of Birmingham

vs.

Wyatt Tee Walker, et al.

Case No. 130-173

[fol. 186] Dear Judge Jenkins:

As Bar Commissioner of the Tenth Judicial Circuit, I have been requested by Jack Greenberg, Constance Baker Motley, Leroy David Clark, and Norman Carey Amaker

to permit their appearance in the above matter as counsel for Respondents. Their request has been accompanied by Certificates of Admission to practice in the courts of New York and personal endorsements by members of the Bar of New York and of Alabama.

The documents appear to be in order. Therefore, I, as Commissioner of the Tenth Judicial Circuit, certify that the above named attorneys have complied with the rules of the Alabama State Bar, and, if you see fit to allow their participation in your Court, may appear in the above matter.

Yours very truly,

Geo. Peach Taylor  
George Peach Taylor

GPT:st

Filed in Office April 23, 1963.

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IN THE CIRCUIT COURT

AMENDED ANSWER TO BILL OF COMPLAINT—

Filed April 24, 1963

Comes now respondents, Wyatt Tee Walker, et al., and with leave of court first had and obtained, amends the answer previously filed herein by adding the verification which was inadvertently omitted.

State of Alabama)  
Jefferson County)

Before me personally appeared Arthur D. Shores, who after being first duly sworn deposes and says, that he is one of the attorneys for respondents in the above-styled cause and that the matters and the things alleged in the foregoing answer are true and correct as averred to the best of his knowledge, information and belief.

Arthur D. Shores

Subscribed and sworn to before me this 21st day of April, 1963.

Agnes N. Studemire

Filed in Open Court April 24, 1963.

[fol. 187]

IN THE CIRCUIT COURT

AMENDED ANSWER—Filed April 24, 1963

Now come the Respondents, in the above styled cause and amend their Answer to the Bill of Complaint and the Amendment thereto by adopting each and every allegation of the Answer of Respondents heretofore filed for the Respondents added to the Amended Complaint, and by adding thereto the following affirmative defenses:

*First Affirmative Defense*

8. Respondents further allege that all of the activities and conduct of the Respondents within the State of Alabama, City of Birmingham, were lawful and peaceful, and that the purpose, intent and effect of the petition for an injunction is to prevent and discourage the Respondents and others similarly situated, from exercising rights guaranteed to them under the Constitution of Alabama, and the United States Constitution; the efforts on the part of the Petitioner and public officials of the State of Alabama and the City of Birmingham, to deprive residents of said City and State of rights guaranteed to them under the Constitutions of the State of Alabama and of the United States, is in violation of the rights of Respondents under the First, Fifth and Fourteenth Amendments of the Constitution of the United States and Article 1, Sections 2, 4, and 6 of the Constitution of the State of Alabama, and particularly those provisions of said Constitutions which guarantee the right of free speech, press and assembly; right to petition and equal protection of the law.

9. Respondents allege that the City of Birmingham, acting through two City Governments, has upon information and belief adopted and seeks to enforce a public policy which requires separation of the white and Negro races and the segregation of its Negro citizens, in virtually all aspects of life, both public and private, within the State of Alabama.

10. Pursuant to such policy, the City of Birmingham, acting through two City Governments has among other things:

(a) Maintained a system of segregation in its public schools on primary and secondary levels so that, upon information and belief, there are, in the City of Birmingham, no Negro children who attend public schools together with white children; furthermore, there are no Negro teachers or administrators employed in any of the public schools in the City of Birmingham which white children attend.

[fol. 188] (b) Maintained a system of segregation in its civil service so that, upon information and belief, there are only a very few Negroes, if any, employed by the City of Birmingham in positions other than in menial and unskilled positions; accordingly, there are no Negroes employed as City police officers, tax officials, as lawyers, as court officials, as officials in the public health or public works department or any other department in the City of Birmingham, except in the performance of maintenance, janitorial or similar duties.

(c) Maintained a system of segregation in the administration of justice and all of the Respondents herein will eventually face trials in the Circuit Court of Jefferson County, Alabama, where Negroes are systematically excluded from the service on grand or petit juries in the Circuit Courts of said County.

11. In order to make the continued maintenance of this public policy of enforced segregation possible:

(a) The elected and appointed officials of the City of Birmingham, Alabama, have utilized their official positions and their power and influence to encourage and adopt various measures to enforce similar patterns of segregation in all levels of government.

(b) The said City officials have utilized the police power to prevent Negroes from asserting their rights under the First and Fourteenth Amendments of the Constitution of the United States and Article 1, Sections 2, 4 and 6 of the Constitution of the State of Alabama by ordering the arrest and detention of Negroes who insist on the exercise of said rights and of white persons who cooperate with and assist said Negroes in the exercise of such rights.

12. The aforesaid public policy of segregation of Negroes and discrimination against them in all phases of public life is contrary to the Constitution of the United States and is further contrary to the basic inherent rights of such persons; the purpose of the maintenance of such policy is to maintain an unlawful and immoral domination over Negroes by the members of the white race in the City of Birmingham, Alabama.

13. Upon information and belief, the instant petition was filed at the request and/or command of one Eugene "Bull" Connor, in accordance with the policy of the City of Birmingham, Alabama, in enforcing the aforesaid illegal and immoral pattern of segregation. The City officials of Birmingham, Alabama, or one Eugene "Bull" Connor, brought this action to interfere with Negroes and whites in the exercise of their lawful right to protest against the aforesaid illegal and immoral system of segregation.

14. By reason of the aforesaid, petitioner comes into this proceeding with unclean hands and under circumstances which as a matter of law and equity require judgment dismissing the petition herein and vacating the temporary injunction heretofore entered.

Wherefore, the Respondents request that the petition is dismissed.

Arthur D. Shores, 1527 Fifth Avenue, North, Birmingham, Alabama;

Orzell Billingsley, Jr., 1630 Fourth Avenue, North, Birmingham, Alabama;

Leroy D. Clark, Norman Amaker, Jack Greenberg, Constance Baker Motley,

Attorneys for Respondents.

*Duly sworn to by Arthur D. Shores, jurat omitted in printing.*

[fol. 190]

#### IN THE CIRCUIT COURT

#### MOTION TO EXCLUDE TESTIMONY AGAINST ALL RESPONDENTS —Filed April 24, 1963

Come now the respondents, by their undersigned attorneys, and move the court for an order excluding all of the testimony introduced by complainants, against respondents, and as grounds therefor show the following:

1. The testimony introduced as to each and every respondent fails to show, beyond a reasonable doubt, that any of these respondents, or all of them, knowingly and wilfully violated the injunctive order of this court of April 10, 1963.

2. The testimony as to each and every respondent fails to show that any respondent, or all of them, knowingly or wilfully violated any lawful injunctive order of this court.

3. The testimony failed to establish that the commencement of the instant action was duly authorized, by resolution of the Board of City Commissioners, of the City of Birmingham.

4. The testimony, as to each and every respondent, fails to show that any respondent, or all of them, engaged in any unlawful activity or violated any ordinance of the City of Birmingham, or statute of the State of Alabama.

5. The testimony fails to establish that any of the respondents, or all of them, engaged in any mass street parades, or mass processions or like demonstrations, without a permit, trespassed on private property, after being warned to leave the premises by the owner or person in possession of said private property, or engaged in congregating on the street or public places into mobs, or unlawfully picketing business establishments or public buildings in the City of Birmingham, Jefferson County, Alabama, or performing any acts calculated to cause breaches of the peace in the City of Birmingham, or conspiring to engage in unlawful street parades, unlawful processions, unlawful demonstrations, unlawful boycotts, unlawful trespasses, and unlawful picketing or like unlawful conduct or doing any acts designed to consummate conspiracies to engage in said unlawful acts of parading, demonstrating, boycotting, trespassing and picketing or other unlawful acts, or from engaging in acts and conduct customarily known as "kneel-ins" in churches, in violation of the wishes and desires of said churches.

6. There is no evidence showing why the respondents, or any of them, should be punished for contempt of this court's [fol. 191] injunctive order, of April 10, 1963, or why the respondents, or any of them, should publicly retract or recant the statements made publicly at press conferences and mass meetings on April 11, 1963.

7. There is no evidence showing that respondents, or any of them, wilfully or knowingly violated any of the terms of this court's injunctive order of April 10, 1963.

8. There is no evidence showing that respondents, R. L. Fisher, James Bevel, N. H. Smith or J. W. Hayes were served with copies of this court's injunctive order of April

10, 1963, prior to their arrest and imprisonment on April 12, nor April 14, 1963.

9. There is no evidence showing that respondent, Bevel, was served with a copy of this court's order to show cause why he should not be held in contempt.

10. There is no showing that respondent, Andrew Young, was served with a copy of this court's injunctive order.

11. The evidence introduced by complaint shows that the respondents, who engaged in certain activity, engaged only in activity protected by the First Amendment and by the due process clause of the Fourteenth Amendment to the Constitution of the United States.

12. The evidence shows that respondents were arbitrarily unlawfully and unconstitutionally denied a permit to parade and demonstrate, and picket against racial segregation, in a peaceful manner, on the streets of the City of Birmingham, Alabama, in violation of rights secured to respondents by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States.

Arthur D. Shores, Attorney for Respondents.

Filed in Open Court April 24, 1963.

[fol. 194]

IN THE CIRCUIT COURT OF THE  
TENTH JUDICIAL CIRCUIT OF ALABAMA

IN EQUITY

Case No. 130-123

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CITY OF BIRMINGHAM, A MUNICIPAL CORPORATION OF THE  
STATE OF ALABAMA, Complainant,

vs.

WYATT TEE WALKER, et al., Respondents.

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Transcript of Testimony

APPEARANCES

Messrs. J. M. Breckenridge and Earl McBee, City Attorneys, City Hall, Birmingham, Alabama, for the Complainant.

Messrs. Arthur Shores and Orzell Billingsley, Attorneys at Law, Birmingham, Alabama;

Messrs. Norman C. Amaker, Jack Greenberg, and Leroy Clark; and Mrs. Constance Baker Motley, Attorneys at Law, New York, New York, for the Respondents.

Reported by Jimmie Crumley, Ramon A. Crockett, Marron A. Spinks.

COLLOQUY BETWEEN COURT AND COUNSEL

(Whereupon at 9:35 A.M. counsel were introduced to the court and recognized by the Court.)

The Court: This case comes before the court today on a citation for contempt and on a Motion to Dissolve an injunction which had previously been issued in the case.

The Motion to Dissolve the injunction was filed first. [fol. 195] However, since the Contempt Citation was filed on the same day and the Court considers it necessary to take up in that order the Contempt Citation first before the Court will consider the question in a Motion to Dissolve.

Mr. Shores: Your Honor, we would like to move that the Motion to Dissolve be placed ahead because as a matter of filing first and as a matter of logic. If the Motion to Dissolve were sustained then there would be no need for a hearing on the Contempt Citation, and for that reason we would like to respectfully move the Motion to Dissolve and Vacate be heard first.

The Court: The Court takes the position the Order that it issued in the case, even if such order should be an invalid order, is subject to the authority which the Court has, and any violation of that particular order, whether it is valid, should be ruled upon previous to any Motion to Dissolve. The question before the Court is one of the Court's authority. Your Motion will be overruled.

Mr. Shores: Your Honor, we would like to reserve an exception.

Your Honor, as our first pleading we would like to file a Plea in Abatement with respect to two of the respondents in the matter of the names.

The Court: I have in here an answer which has been filed and also a demurrer of the respondents which has been filed, and also a Motion of the respondents to Dissolve the injunction. It is the opinion of the Court the Plea in Abatement has been waived.

Mr. Shores: We except, Your Honor.

Now, Your Honor, we would like to file a Motion to Discharge and Vacate the order and ruling to show cause. If Your Honor please, we would like to call witnesses on this Motion if Your Honor is ready.

The Court: This Motion goes to the question of whether or not the Court improperly or unlawfully issued the order. As I stated previously, the Court takes the position that

the order that was issued was issued with the authority of the Court and it should be properly approached by a motion or some other legal procedure so that the Court can [fol. 196] determine whether or not it has properly issued the order. The question here before us is the question of a contempt of an order and the Court intends to handle the matter in that particular light.

Mr. Shores: Your Honor, this goes to the question of jurisdiction, whether or not the Court has jurisdiction to begin with.

The Court: The only question I can see about the jurisdiction of the Court is whether the Court is an equity court and whether or not these parties who are present were served and were notified of this injunction, whether they were in the jurisdictional territory that this court embodies; the only question is whether they got notice and then whether or not the injunction that was issued was issued by a judge who had the equity authority to issue an injunction, and then whether or not they knowingly violated this injunction. Your motion will be overruled.

Mr. Shores: We except, Your Honor.

Your Honor, the last motion is one for severance. The way we read the citation it appears that the respondents are to be tried for both civil and criminal contempt, and if that is the thrust of the notice we want to file this Motion for Severance in order they be tried for one at a time because there are certain safeguards that would apply to criminal contempt that would not apply to civil contempt.

The Court: I notice this has a place for the signature of Orzell Billingsley, Jr. Will he be in the trial of this case also?

Mr. Shores: He will be in the trial also.

The Court: As far as the Motion for Severance is concerned, I think the authority of the United States versus United Mine Workers and Lewis are the authority for the trial of these cases jointly. Overrule the motion.

Mr. Shores: We would like to reserve an exception.

Now, we would like to file an answer to the petition and Order to Show Cause.

The Court: Are you directing your answer to both citations?

[fol.197] Mr. Shores: Just the Petition to Show Cause. This isn't an answer to the complaint.

The Court: I know, but we have two. We have an amended petition as well.

Mr. Shores: It is to the petition and the petition as amended.

The Court: This Court takes the position that those respondents as brought in under the amended petition which sets up another set of circumstances and facts should be continued to be heard at a later date. The Court has continued the charges as raised by the amended petition and those respondents as charged therein for two weeks. It will be continued until May 6th at 9:30.

Now, I will read the names of those that are included within that amended petition and state of course that you are released as far as this trial here today is concerned and your matter is continued for two weeks. Of course, the first two, the Alabama Christian Movement for Human Rights and the Southern Christian Leadership Conference are parties to this original.

Mr. McBee: No, Judge, they are not.

The Court: Then those two would be released until that time. As I understand, none of these are parties to the original contempt citation, is that correct? I want to be sure.

Mr. McBee: Are you referring now to the original bill?

The Court: No, I am not referring to the original bill, I am referring to the original Contempt Citation.

Mr. McBee: Those that are listed on the amendment to the petition, Roman numeral number one, those listed were not included by name in the original Contempt Citation, which I believe was issued on the 15th of April.

The Court: Ennis E. Knight, Parnell Walker, Margaret Askew, John Germany, David Darnell Darling, Will Bush,

Gertrude Grant, Hattie Felder, Luella Givner, Marie M. Pettaway, Lester Cobb, Jr., T. K. Nelson, Henry Crawford, Constance Louise Harris, Barbara Jeannette Lawson, Elizabeth Jones, Gertrude Thompson, Jimmie Mae Clay, Georgia Lou Thompson, Ruthie M. Johnson, Bernice Roy-ster, Fannie Meyers, Rosie Lee Storrs, Doris Bogin, Helen Crawford, Susie Wilson, Beatrice Norman, Hattie Pearl Pearson, Hattie A. Rush, Samuel James Webster, Cleveland Johnson, Booker Lowe, Nita Jean Powell, Shirley Moore, Mamie Smith, Juliette Norris, Jonathan Gray, Richard Taylor.

The cases as to those particular respondents that I have called has been continued until May 6th.

Mr. McBee: Your Honor, will they stand on the same petition unless we see fit to amend further?

The Court: They stand on the same petition without further order.

Mr. Shores: Your Honor, since we feel jurisdiction is fundamental to this case, we would like to respectfully request a continuance to give us a right to pursue out a Writ of Prohibition and let them all be continued until May 6th.

Mr. McBee: We would certainly oppose that.

The Court: The request is denied.

Mr. Shores: We except.

The Court: If any of those parties that I have named that I have continued their case until May 6th, if any of you care to leave at this time, you can do so. I don't want to interrupt the proceedings with any of you leaving, but any of those that I have called that want to leave at this time may go.

The issues as raised by the original Citation and those respondents named therein and the answer which has been filed as to the Citation create the issues that we are ready to try at this time.

Mr. McBee: May I ask this, Your Honor? There seems to be a little doubt with reference to the answer. I find nowhere a statement or a reference to which respondents are being represented. Are we to assume that by the use

of the word "respondents" in the body of this answer that all respondents are being included in the answer filed on their behalf?

Mr. Shores: That is correct.

[fol. 199] Mr. McBee: Is that correct?

Mr. Shores: That is correct.

Mr. McBee: That would include, as I understand it, just for our own further information as we go along, that would include the respondents who were named to the petition as amended but whose case is not being tried at this time?

Mr. Shores: That's right.

Mr. Breckenridge: To clarify that situation as it stands now, unless the answer is amended, the Petition on May 6th would be on this answer for the respondents who were dismissed; is that correct?

The Court: That is correct.

Mr. Shores: Your Honor, is the point clear as to whether or not the City could bring this action?

The Court: Well, the Court takes the position that the City has a right to bring a suit in this court and this Court has the authority to issue an injunction, and the only question this Court has before it is the question or whether or not these respondents have been served with notice of the injunction and whether or not they have knowingly violated it.

Mr. Shores: Your Honor, the City would have no right to bring a suit if there were no case of controversy and whether or not they were properly authorized.

The Court: If that be the case then the respondents should have sought an orderly process of this court to attack the authority of the City in bringing such a case, otherwise, the Court considers it the prima facie right of any individual or corporate body to bring such an action.

Mr. Shores: And we would seek that by filing a Motion to Dismiss.

The Court: The Motion to Dismiss as filed has been continued and the Court stated in its original statement that until the Contempt Citation is out of the way the Court

would not consider the Motion to Dissolve. It is a question of the authority of this Court and I must say we are [fol. 200] all lawyers acting in response to the authority of a court of law. The only question I can see is whether or not there has been any knowing willful violation of a lawful order of the Court.

Mr. Shores: Your Honor, then you rule, despite the showing there is nothing in the record which shows the parties purporting to invoke the authority and jurisdiction of this Court has been established, then your ruling is, notwithstanding that fact that there is nothing in the record, that the Court has jurisdiction to proceed with the Citation for Contempt?

The Court: That is correct. The Court passed upon the right of the bill as filed and issued its injunction upon that sworn bill. That may be attacked at some other time, but as far as this Court is concerned, the authority of the Court in issuance of its injunction and whether or not that has been violated is the only issue that I have before me now.

Mr. Shores: We would like to respectfully except to Your Honor's ruling.

The Court: Who will the City have?

Mr. Breckenridge: Your Honor, could I ask that Mr. Hodges be placed on call, the City Clerk of the City of Birmingham, who could be over here in just a few minutes?

The Court: Does anyone want the rule invoked as far as witnesses are concerned?

Mr. Shores: We would like to have the rule invoked.

The Court: The City is entitled to one representative in the court room and the other witnesses will be under the rule.

(Rule invoked.)

[fol. 201] Mr. McBee: May it please the Court, we want to ask one question; we will ask whether or not Commissioner Connor has been subpoenaed and if he has, he hasn't received any subpoena, and, of course, we understand the rule has been requested, and we want some directions on that.

The Court: Did you subpoena him?

Mr. Shores: Yes, we subpoenaed him.

The Court: I would like for him to be on call so far as this case is concerned. I wouldn't like to delay the matter.

Mr. Breckenridge: He has stayed in the courtroom, and we ask permission for him to stay in the courtroom if he is a witness. So far as I know, he is not a witness.

Mr. Shores: We plan to call him as a witness, and I would like to have him excused under the rule—like to have him under the rule.

The Court: All right, Mr. Connor, I will have to ask you, if you will, to step out of the room.

Mr. Connor: Your Honor, will you put me on call?

The Court: You will be on call.

MR. W. J. HALEY, called as a witness, being duly sworn, was examined and testified as follows:

Direct examination.

By Mr. McBee:

Q. State your name, please?

A. W. J. Haley.

Q. And what is your official job or position?

A. Chief Inspector for the Birmingham Police Department.

Q. In your position as inspector of Police of the City of Birmingham, I will ask you whether or not your position is second in rank to that of the Police Chief?

A. It is.

Q. Were you present at an occasion on the 12th day of April of 1963, which I believe it is identified to be Good Friday, in the afternoon, at which time any of these parties who have been arrested and who have been cited for contempt were involved?

[fol. 202] A. Yes, sir, I was.

Q. Would you describe the nature of that occasion?

A. We had information that they had planned a march, a demonstration either on the City Hall or the City Jail. The advanced information that had been given us were that they were coming up 6th Avenue from the church on 16th Street and 6th Avenue to 19th Street. Captain Evans and myself—I believe I was with Captain Evans at that particular time—were in the 1700 Block on 6th Avenue North. A march did start from the 16th Street Church. We had blocked off—

Q. 16th Street? Now, what place is that?

A. 16th Street and 6th Avenue, North.

Q. 6th Avenue, North?

A. There was a large number of Negroes in the march. There was also a large number of on-lookers, or by-standers, that were not participating in the actual march, but they were clapping, and hollering, and hooping on the sidelines. The march continued to 17th Street.

Q. Were those sideliners doing anything with their feet besides clapping, and hollering, and hooping?

Mr. Shores: We object to leading.

The Court: Don't lead. Sustained.

A. They were following the marchers, but not in the procession. Most of them were on the south side of the street, and the marchers had started on the north side of 6th Avenue. When the marchers got to 17th Street and 6th Avenue, they made an abrupt right turn. We had blocked off 6th Avenue at the 18th Street entrance, and had stopped all the vehicular and pedestrian traffic in that particular block. We had several motorscouts, that is solos, three-wheelers, and a number of other police personnel in the immediate vicinity. They were finally rounded up, and most of them were picked up in the 1800 block of 5th Avenue, North. There were approximately 54 arrests made at that time. I believe there were 51 arrests made of the marchers, and [fol. 203] three arrests for various other violations. That is, my own independent recollection. I can't say exactly

what it was. There was one or two for loitering, and after refusing to move, after the crowd had gotten unruly, and would not move on, and then possibly one for resisting arrest, loitering and resisting.

Q. All right, now, do you know—do you remember who was at that Good Friday march among the particular defendants that are named in this original petition?

A. I could not name the entire group. There were a number that I had seen, and, of course, knew their faces, but did not know their names. I did know Rev. King and Abernathy. They were leading the march at the time they were apprehended.

The Court: Which Rev. King do you have reference to?

A. This one sitting on the end of the first row, Martin Luther King, not A. D.

Q. And was the other Respondent that you named Ralph Abernathy?

A. Ralph Abernathy. He is the third one on the front row.

Q. Now, was anybody else of those that you knew in the parade, whether they were arrested then, or later?

A. I didn't see anyone that I knew personally, any of the other ministers, personally. I understand one other minister was arrested later, but I personally did not see him in the march.

Q. You did not personally see him. Now, this occasion, then, on Good Friday, were there a large number of people congregated there, or a small crowd, or what?

A. It was a large number. There were approximately, I would say, fifty or sixty in the original march. Well, more than fifty, because fifty-one were arrested. There were—just a rough estimate, I would say between one thousand and fifteen hundred that were not participating in the actual marching, but were following the crowd, and were on the corners and various places in the immediate vicinity.

Q. Now, where was that crowd congregated? Did it have a particular place to congregate?

[fol. 204] A. When the march originally started from the church the majority of them were on the 16th—in the—well, it is 16th Street and 6th Avenue, and many of them were in the park between 16th and 17th Street, and between 5th and 6th Avenues North.

Q. Were any of them in the church?

A. There were, of course, a number of them in the church. There were approximately three hundred and fifty or four hundred. Now, I don't know how many of the ones that were in the church actually started participating in the march, and how many joined the on-lookers. All of the ones in the church did not join in the march, or procession, or parade.

Q. Did that group in the park remain in the park, or what happened to them?

A. No, sir, they followed the marchers at every turn that they made, and they came on down to 5th Avenue, and were crowded up into the 18th hundred block of 5th Avenue on both sides of the street.

Q. That is on both the north and the south side?

A. And the south side, yes, sir.

Q. Well, it would really be the avenue, wouldn't it?

A. 5th Avenue North, yes, sir.

Q. Now, did you have any further occasion, as an inspector of police, to be present at any occasion when a large number of the respondents in this case were present?

Mr. Shores: We object, being too indefinite on the occasion.

Mr. McBee: Well, I can specify if you want me to. I didn't want to lead.

The Court: I think it should be restricted to any occasion involved here.

Mr. McBee: Yes, sir, Your Honor, we will restrict it to what is in the complaint.

Q. Did any unusual occasion occur on Easter Sunday, the 14th of April?

A. It did.

[fol. 205] Q. Where did that occur, and about when?

A. There was a large congregation at the church on 7th Avenue and 11th Street North. I don't recall the name of the church.

Q. 7th Avenue and 11th Street?

A. North.

Q. All right, sir.

A. We had received advance word that the march—a march would start from that church at high noon. They met for approximately, oh, I would say two hours or better prior to the time. The ministers, A. D. King is the only one of the ministers that I knew personally, except Wyatt Tee Walker, and I did not see him go in the church. I did hear later he was in the crowd—

Mr. Shores: We object to what he heard.

The Court: Sustained.

Q. You could not testify by hearsay, just your own knowledge.

A. I am sorry. A march did start at approximately 2:45 P.M. from that church. The march was scheduled to leave the church, and go one block east to 12th Street, and turn south toward the City Jail. They did not follow the proposed route. Instead, they left the church and they marched south on 11th Street from 7th Avenue. Captain J. M. McDowell and myself left our predesignated place at 11th Street and 6th Avenue, North and went to the—approximately the alley between 5th and 6th Avenue on 11th Street, and there were between three and four hundred, or more, in a march up the middle of the street and on the sidewalks. It was almost a solid procession, and in the forefront, they had some smaller children, I would say from ages of ten years up—on up, and then, of course, they had grown people in the ranks, also. Captain McDowell and I stopped the procession, or, rather, we told the procession to halt at 5th Alley and 11th Street North. They did not halt. They made a right turn and ran into the alley going west in 5th Alley. They were apprehended—then they made a sharp turn. That would have made a horseshoe turn, approximately,

back towards 6th Avenue from one-fourth of a block on up [fol. 206] a half in 5th Alley. They were apprehended, most of them, in the field between 5th Alley and 6th Avenue, North and between 10th and 11th Streets. They were—my independent recollection, it was in the 20's that were actually arrested in the procession. There were more than that that originally started out. We did not—were not able to arrest all of the ones in the original marching. Following the arrest of the marchers, there were three preachers. Without going to my notes, I am not able to name them.

**Q.** Do you have your notes?

**A.** I do not have my notes on it. There were three ministers, though, that were in this particular march. They were all placed under arrest, and placed in the patrol wagon for transfer to the City Jail. There was a large crowd of between fifteen hundred and two thousand Negroes immediately in the vicinity; most of them in the Ten Hundred Block of 6th Avenue, North, and the majority of them congregating at the 11th Avenue—I mean at the 11th Street corner of 6th Avenue, just one block from where the march originally started.

**Q.** All right, what did they do, if anything?

**A.** There was some woman that was put under arrest by a couple of officers in the crowd. She was not a member of the marchers. She was not dressed as a church-goer. She had on just everyday clothes, and she had on bedroom slippers. She was arrested and—

**Mr. Shores:** We object to the testimony about the woman who was not a part of those.

**A.** She was arrested, though.

**Mr. Shores:** She wasn't a part, you say, of the marchers?

**Mr. McBee:** She was a party there.

**The Court:** I will overrule the objection. It has some bearing on the type of crowd and congregation gathered there. Objection overruled.

**Mr. Shores:** We except.

A. The defendants were still in the Ten Hundred Block. We were not able to move them out between crowds that [fol. 207] were congregated, and then there was some blockage with cars. This woman did resist arrest, and in the ensuing struggle to subdue her, someone from the crowd started throwing rocks. She was arrested. We also arrested at the time two Negro men that were on the south side of 6th Avenue right close to the 11th Avenue intersection, but still in the Ten Hundred Block, for throwing rocks. One rock struck a City three-wheel motorcycle breaking the windshield and damaging the radio. It narrowly missed the arresting officer, the original arresting officer that arrested this woman.

Mr. Shores: We object to that testimony. It has nothing to do with these defendants.

The Court: Sustain unless the witness saw the missile thrown.

A. I saw the missile in the air. I, personally, did not see who threw the missile.

Q. Could you tell where it came from?

A. Yes, it came from the south side of the street. There was three or four—

Mr. Shores: Did your Honor sustain the objection as to that testimony?

The Court: I will overrule as to what he actually saw. I think he can testify to that. Overruled as to what he actually saw.

A. There were also three or four other rocks thrown—not rocks, but pieces of concrete with mortar, apparently, because they were soft. They broke up when they hit the pavement.

Mr. Shores: We object unless he saw the defendants throwing rocks.

The Court: Overruled.

Mr. Shores: We except.

The Court: I understand the position being the defendants necessarily threw the missiles?

A. The defendants were arrested, but I did not make the arrests. I was splattered on the feet and ankles with the [fol. 208] rocks that were thrown, that I saw thrown. That is the ones I just described, which were concrete and mortar chunks. Now, another arrest was made at a later time, but I was not present when that arrest was made, either.

Q. All right, now, Inspector, aside from the matters you have related so far, would you describe the conduct of the group, the crowd that was gathered there?

A. They were jeering.

Mr. Shores: Again, we object unless he can describe it to those defendants. A crowd isn't on trial for contempt.

The Court: For ought we know, I don't know which one of these defendants might be involved in this particular occasion.

Mr. McBee: Your Honor, we expect to show from the evidence that this whole business is a planned business, and the crowd was gathered intentionally and purposely. The injunction is against the gathering of mobs, and we say this was a mob, and we are going to show before we get through that these defendants engaged in the gathering of those mobs.

The Court: Do you have evidence you intend to show or to indicate any of these respondents were connected with this particular incident?

Mr. McBee: We have evidence we expect to show on that matter that they gathered the mob together. He who gathers the mob together is responsible for what the mob does, in our theory.

The Court: Was it on this occasion this incident occurred?

Mr. McBee: Yes, sir.

The Court: Was it in close proximity to this occasion?

Mr. McBee: We expect the evidence to show this whole show was put on purposely and intentionally by the planned

operation of the defendants that are named in the original petition.

Mr. Shores: Your Honor, he has already testified these people gathered spontaneously. Every time an officer stops someone, a crowd will have a tendency to gather. He hasn't laid any basis for connecting these marchers with this crowd.

[fol. 209] The Court: I recognize the fact that we can't put on all the evidence all at one time, and subject to it being connected up in the manner in which counsel has stated, I will allow the testimony, subject to being connected up.

Q. You may proceed.

A. Will you repeat the question.

Q. The question was what the conduct of the crowd at the time those things you have already related happened?

A. It was jeering, toning, there was some cursing and belittling of the police officers. There was lots of loud hollering, and handclapping. They were in a restless mood immediately subsequent to the arrest of the participants in the march.

Q. All right, now, this crowd that you say gathered, did you have occasion to observe from time to time during the morning, and during the afternoon, whether or not the crowd gathered before any march began, or whether or not the crowd came up after the march started?

A. The crowd gathered beginning before noon, and remained until after the arrests were made and the area was cleared, until after, I would say, 3:30 or 3:45.

Q. Now, there was no incident of marching, or anything of that kind happened prior to about 2:45?

A. No.

Q. Did the crowd get larger as the time went on before the march began?

A. There was some addition, I would say, to the crowd, but many of the members that were in the church had

joined it. The crowd was larger after the congregation let out then it was prior to the time that the march started.

Q. Then, the congregation let out—

A. I would say the group would be maybe a few more than the number that left the church and joined the crowd.

Q. Then, would you say whether or not the church let out before the marching began?

[fol. 210] A. It did. That is where the march started from. We had the area blocked off, and did not allow any vehicular traffic through there for some time prior to the time that the church let out. There was too many people around. Well, it was a traffic hazard for one thing.

Q. Did they have the streets blocked?

A. They had some of the streets blocked, yes, sir.

Q. Did they have the sidewalks blocked?

A. Yes.

Q. Now, are you describing the crowd, or are you talking about whether anybody besides Negro people were in that crowd?

A. Oh, no, we kept all of the white folks—we rerouted every bit of the vehicular traffic, and did not allow any white people in the area.

Q. And there were none in there?

A. There were none except police officers, and there were some reporters.

Q. Reporters and police officers only?

A. That's right.

Q. Who was it blocking the streets and sidewalks, the police officers, or who?

A. We blocked the vehicular traffic with police officers to reroute the traffic around the crowds that had gathered around 11th Street and 6th and 7th Avenue. We, the police department, did that.

Q. I understand that.

A. The sidewalks and a portion of the street was blocked at the height of the commotion that went on following the march. Prior to the march, the by-standers were standing on the sidewalks, and from the sidewalks to the curbs, and

on parked cars, and sitting on parked cars, and things of that nature. They were not actually blocking the streets.

Q. They were on the sidewalks?

A. That is correct.

[fol. 211] Q. But when they started the march, then, they did block the street?

A. They did block the street. That is between 11th Street and 7th Avenue up to 5th Alley and 11th Street. The street was solid, and the sidewalks were solid with marchers.

Q. Now, I possibly should ask you about the Good Friday crowd. I did not, I think—I overlooked it, I think. You stated that the crowd in that group, I believe, was around one thousand, or one thousand to fifteen hundred. Did you have occasion to observe whether or not that crowd assembled before, or after the incident began? That is, the actual marching?

Mr. Shores: We object to that question. What crowd is he referring to now, and what dates?

Mr. McBee: Talking about the Good Friday crowd. You ought to know that, Arthur.. That is the 12th.

The Court: The reference is April 12th. Were you present before the incident occurred?

A. Yes, sir.

Q. Would you tell the Court whether or not that crowd—when that crowd began to gather?

A. It began to gather a couple of hours before the march actually started. They have not been on schedule with any of the marches to-date.

Mr. Shores: We object to what kind of schedules they have been on.

The Court: Sustained.

Q. But, at any rate, they did begin two hours before the march began, or procession began?

A. That's right.

Q. Now, these processions, how—would you describe how they were in terms of single file, double file, or what they were?

A. The Good Friday march, they were marching in a column of two's, and in step, I would say. I don't know whether you would call it military. They were just in step in columns of two's spaced the same part.

[fol. 212] Q. Spaced behind each other about the same distance? Is that what you mean?

A. That's right.

Q. Now, this occasion that you say happened on Easter Sunday, did that group march almost the same way, or a different way, or how were they organized?

A. The entire group that first started out marched in just two abreast. That was the ministers, or the ministers and the ones following, and then they were marching on the sidewalks two abreast, and a portion of the congregation between—I would say between three and four hundred, possibly, which included children, some nine or ten years on up, two older people, or elderly people, even. They were marching down the street and on the other side of the avenue, on the other side of 11th Street, also. The entire group, the children, and the first ones run down the alley, and then the rest of the group followed them.

Q. Now, the three or four hundred, was that all—was that the only column that was out there, or did they have two different columns on that day? I haven't understood you.

A. Well, they had, I would say, a solid mass coming down the street, which did not include the ministers, the ones that were ahead—apparently had organized the march.

Mr. Greenberg: I object to apparently.

The Court: Sustained.

Q. Let me ask you what you mean by "solid mass" coming down the street?

A. They were marching abreast in the width of the street, and it was completely filled with the group that was marching down 11th Street.

Q. In other words, the entire width of the street?

A. The entire width of the street, and on both sides of the street there were also marchers.

Q. You mean to say along the sidewalks?

[fol. 213] A. Yes, sir.

Q. Now, was that a separate—were those separate columns of marchers, or all part of one?

A. It would be hard to distinguish it is separate, in that they were abreast. Of course, there was some cars parked that would separate the group on the sidewalk and the group that was in the street. There was also a walkway—on the east side there, I don't believe there were any on that portion between the sidewalk and the curb, to the best of my recollection.

Q. That is the grassy part?

A. The grassy part.

Q. Now, did this marching mass that you have spoken of, was it led by any of the persons that are involved in this lawsuit—I mean in this contempt citation?

A. Mr. McBee, I couldn't personally identify the ministers. I was on the east side in the street, and that was the group— The group that I was facing was the—well, as I stated, the first ranks were the younger children, and then the others were just members of the congregation that I did not recognize, the ones on the right side, and my attention directly to them, specifically, because they were my responsibility.

Q. When they started into the alley, was it the entire solid mass that went into the alley?

A. Well, it was an operation, would be like a covey of quail, I suppose, that broke and ran, and it was not in any organized step that they were doing during the run.

Q. In other words, after they ran in the alley?

A. After we told them to halt, Capt. McDowell and I had told them to halt at 5th Alley, then they veered sharply to the right; and they ran down in the alley, and there were motorscouts, traffic patrolmen, and others that apprehended them in the field. Now, all of them, the ones that were in the march, we were not able to identify.

Q. I see. Now, the solid mass, or the group that took part [fol. 214] in this solid mass march, you stated were about how many?

A. I would say between three and four hundred.

Q. Now, what happened to the other members of the crowd. Do you know where they were, or what they did?

A. Yes, they were following the actions. They were not participating, so far as any concerted march, or any concerted—any organized group. They didn't run with the group, they just filtered through and came on down to 6th Avenue, and that is where the crowd finally assembled, on 6th Avenue and the Ten Hundred Block between 10th and 11th Street. There was a number of them that had to go east on 11th Street, and they were on the church steps, and on all four corners.

Q. Sixth Avenue and 11th Street?

A. Eleventh Street.

Q. Now, was that the site of the actual arrests, that is, when the arrests were consummated?

A. Well, that is where they were actually loaded into the patrol unit, from 6th Avenue in the Ten Hundred block.

Q. And the Eleventh Hundred Block?

A. Most of the arrests were made in the field between 5th alley and 6th Avenue, North in the Ten Hundred block. That is after they had ran from 11th Street west, and then turned back north through the field.

Mr. McBee: All right, sir. Judge, I think this limits our questions. We were prepared in another direction, and we have got to check and see on this whether or not it comes within what Your Honor is trying, or not.

[fol. 215] (Whereupon at the hour of 11:40 A.M., Monday, April 22, 1963, the proceedings were in recess until 11:55, when the proceedings continued as follows:)

Cross examination.

By Mr. Shores:

Q. Inspector Haley, how long have you been with the Police Department in the City of Birmingham?

A. It will be twenty-five years August 16th, this year.

Q. And as an Officer of the Police Department you are acquainted with certain ordinances respecting crowds and use of streets, clearing of streets, and that sort of thing?

A. I would say so.

Q. Now, let's get to the demonstration and meeting on Good Friday. Where did you say that meeting was held from which the demonstration begin?

A. It was on 16th Street and 6th Avenue to the best of my recollection. I don't know the name of the Church.

Q. Are you sure you mean the Church that was on 16th Street and 6th Avenue, or was it some other Church?

A. Arthur, I believe that was the one. We have had so many for the past three weeks that I couldn't—but to the best of my independent recollection it was the Church at 16th Street and 6th Avenue.

Q. Do you know what time the march began on Good Friday?

A. I would have to refer to my notes and I don't have the notes with me. It is a matter of record on the jail slips and dockets.

Q. Do you know whether it was in the forenoon or afternoon?

A. It was in the afternoon, I believe.

Q. Again, will you describe just what took place with respect to the marchers?

A. When they came out of the Church they came down 6th Avenue to 17th Street and we had blocked 6th Avenue

off in the 1700 block. The marchers made a right turn at 17th Street and 6th Avenue and went across the street to the south side where they continued on. That would be the south side of 17th Street. And they turned east on 17th [fol. 216] Street onto 5th Avenue and they were apprehended in the 1700 block of 5th Avenue.

Q. And how many were in the group?

A. In the group that was arrested—

Q. How many marchers were in the group?

A. There were fifty-one arrested, and there could have been more than that, because there were some that left the marchers.

Q. Were they all marchers that were arrested?

A. Yes.

Q. This is the Good Friday march, now?

A. Yes.

Q. And as far as you know you arrested only those actually engaged in the marching?

A. We did not arrest all that were in the march. There were more than that in the actual march, but we were not able to apprehend all of them.

Q. At the time these individuals were marching did they march against any red lights or violate any traffic regulations, anything of that sort?

A. To my knowledge they did not. I couldn't observe all of it. My attention was focused on the crowd and not on the lights. The streets were wholly blocked off, so it would not have made any difference so far as vehicular traffic was concerned.

Q. Did the marchers block the streets off or did the Police Department block the streets?

A. The Police Department had previously blocked the vehicular traffic off.

Q. Do you know how long your department had kept motor vehicles away from this Church prior to the march?

A. Some several hours each time.

Q. I believe you say you had been on the Police force for some twenty-odd years?

A. That's right.

Q. In your experience as a police officer for many years would you say it is natural for crowds to gather when they see police officers

[fol. 217] or motor vehicles situated at a certain place and I would say it would be natural curiosity, yes.

Q. And as a police officer who is required to enforce certain regulations, does the City have such a regulation as requires an individual to move on when given an order to move on by a police officer?

A. We moved many of them on. There was a park that most of the congregation was in. The others were milling in the streets or on the sidewalks adjacent.

Q. During the several hours that you had these cars deployed in the vicinity of this Church, did you see any of the persons who were getting moved on out of the vicinity of the Church?

A. There were some. I know there were many white people moved out, because I personally moved some myself.

Q. White people were moved out, but did you move any of the Negroes that were gathering in the vicinity?

A. Not if they were not violating the law.

Q. Well, you had several motor vehicles deployed around the vicinity of this Church?

A. That is correct.

Q. What was the purpose of these motor vehicles?

A. To give protection to the people that were inciting trouble; to keep any breach of the peace from happening.

Q. Do you know how many officers you had in this vicinity at this particular time?

A. We had quite a number of them. And have depleted our forces pretty severely to afford the protection that we have been giving them.

Q. Have you an idea of the number?

A. The day shift and evening shift traffic motorized patrol, I would say to count them.

Q. Can you estimate?

A. I would say not less than forty or fifty, and that is including some from Ensley and some from the East End Precinct.

Q. Could you get that information and bring it when you [fol. 218] return from the noon hour?

A. It will be available. The Captain of the Traffic Division has the assignment sheet. I did not make out the assignment sheet, but I of course recognized the motors that were there. And I do know we had special assignments for the motorized patrol.

Q. They assigned all around that vicinity there at that Church?

A. That is correct.

Q. And you did not move any Negroes for violating any ordinance for congregating in the vicinity of that Church?

A. I did not personally. We did have to make a few arrests—that is the department did—for Loitering after Warning, after being requested to move on.

Q. Was that before or after the arrests of the marchers?

A. I believe most of them were after.

Q. And none in so far as—

A. The crowd was not unruly prior to the march.

Q. But you anticipated a crowd gathering? At each of these demonstrations or processions you had advance notice that they were going to march, you anticipated a large crowd?

A. We have had a large crowd every time so far.

Q. And having been previously notified and realizing that a dangerous condition might occur you did not move any Negroes on out of the vicinity?

A. We did not move any from private property or any that were in park prior to the meeting or the parade.

Q. Were there persons congregated on the streets outside the Church?

A. They were milling around. I don't believe any portions of the sidewalk were completely blocked by pedestrian traffic at any time prior to the actual march itself, because there were Negroes coming and going. I mean they were just circulating around in the vicinity.

Q. Then after the marchers came out they did not block any traffic or impede the free movement of people on the streets, did they?

A. The traffic was already blocked for the marchers.

[fol. 219] Q. The traffic was already blocked by the Police Department?

A. By the Police Department.

Q. I see, and you say they marched in twos?

A. That is correct.

Q. And there was sufficient space for anybody else to have walked on the street beside them, is that right?

A. On the sidewalk with them?

Q. Yes.

A. Well—

Q. In other words, they did not take up the whole street as they marched?

A. They were on the sidewalk.

Q. Well, they did not take up the whole sidewalk as they marched, did they?

A. At places they did.

Q. In twos? Were the streets that narrow?

A. That is correct. At 16th Street and 7th Avenue there was not room enough for them to walk more than two abreast. They had to weave in if anybody passed them.

Q. You did not see them push anybody off the sidewalk, did you?

A. I did not.

Q. In so far as that is concerned, they were orderly as they went along, the marchers were?

A. The marchers, as far as I know, didn't use any profanity. They were not taunting like the crowd.

Q. Did you make any arrests for the crowd's use of profanity, anybody in the crowd?

A. Some arrests were made for various offenses other than the marchers, the paraders.

Q. I believe you say you were forewarned of each of these demonstrations?

A. Yes.

Q. How?

[fol. 220] A. I don't believe you will want me to embarrass some of your congregation in answering that question, but we have information from some Negroes, from some of the ministers. We have had it from various sources.

Q. Can you name any one of your sources?

Mr. Breckenridge: We object to that.

Mr. Shores: This is cross examination, Your Honor.

Mr. Breckenridge: In this work it is important that sources not be divulged, and it has no relevancy here.

Mr. Shores: We are allowed quite a wide latitude in cross examination and it would go to the creditability.

The Court: Overrule.

Mr. McBee: I don't believe there is any question at all about the fact that these marchers or processioners or whatever they might want to term themselves, were well known, and they did occur, and I think that it would be less than realistic to make a big issue about how the police found out there was going to be a demonstration. The evidence is they started congregating two or three hours before these marches began, and we think it entirely irrelevant and immaterial and certainly calls for evidence that does not shed any light to Your Honor on the issues in this case.

Mr. Shores: It is brought out he had police officers stationed there two or three hours ahead of time, and this injunction was concerning the illegal performance of certain acts, and I think we have a right to delve into it to find out whether or not these acts complained of were illegal. Your Honor, I believe Your Honor has ruled on that.

The Court: Overrule the objection.

A. There were officers assigned near the Church and there were various conversations held with them and they notified their Superior Officers within the department. The first word we had on Good Friday was that it was going to be at high noon. I believe I read in a press release, in

the newspaper or radio or over the television, I don't remember just which now, but I remember hearing that Rev. Abernathy said they were going to jail on that basis.

[fol. 221] Q. Did they say they were going to jail to visit or for what purpose?

A. They said they were ready to go to jail.

Q. They said they were ready to go to jail, but they didn't say anything about marching?

A. I couldn't tell you their purpose, except that they accomplished it.

Q. Were there any Detectives in the Church?

A. We have had Detectives in the Church.

Q. How many?

A. Ordinarily there are two. There were newsmen in there. To my knowledge I would say newsmen and detectives other than members of your congregation, or your movement.

Q. Did they have the little transistor radios or walkie-talkies, or such as that?

Mr. McBee: Objection, Your Honor.

The Court: Sustained, I don't see where that is an issue in the case.

Mr. Shores: We are trying to find out how they got the information.

Mr. McBee: It is no secret how we got the information. Our next witness will explain it to you.

The Court: I see no point in going into the equipment.

Q. The incident we have been talking about was on Good Friday. Now we come to Easter Sunday. Where was the meeting held on Easter Sunday?

A. The Church on 7th Avenue and 11th Street, North. Thurgood Church, I believe is the name of that one.

Q. Do you know what time that meeting was held, about what time?

A. It was late in the afternoon that the march started. I believe the meeting started promptly around 2:00 or 3:00 o'clock.

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Q. Could it have been a little later?

A. There were big crowds around the Church around that time. I was by the Church.

Q. Did you or any of your officers do anything to disperse the crowds that were around the Church at that time?

[fol. 222] A. I had no violations that were called to my attention. We did not make any arrests to my knowledge.

Q. Did you have any advance notice on that date that there was going to be a march?

A. Yes, we did.

Q. How did you get that information?

A. By the same method we got it on Friday.

Q. With police in the Church?

A. We did have police in the Church. We received it from various sources, the same as on Good Friday.

Q. This crowd that was around the Church, was it a very large crowd or just a few people?

A. The Fire Marshal estimated 350 to 400 people in the Church. There were a number, of course, that were not in the Church. There were a good number on the street in a radius of a block or two of the Church.

Q. Was they congregating or moving?

A. They were standing on people's steps, standing in people's yards and just various places. Actually, I would say most of them were on private property. There were some of them that were on the sidewalk, but not enough to constitute a blockage or to cause a police problem, because the traffic department was there to take care of any traffic hazards that might come up.

Q. And at that time also you had a number of police officers and vehicles about the Church in that vicinity?

A. That is correct.

Q. How many did you have on Easter Sunday?

A. Approximately the same number that we had on Good Friday. To give an accurate count I would have to count the ones from the Captain's assignment, but I would say forty or more.

Q. You say we can get that information after the noon hour?

A. The Captain of traffic, the Commanding Officer of the traffic division—most of the units were from the traffic division. Of course, I am not specifically assigned to traffic or patrol either. It was overall.

[fol. 223] Q. Could you get that information for us during the noon recess, the numbers that were actually there each time?

A. Can I ask Chief Moore if Captain Warren will be available before 3:00 o'clock this afternoon? I have no actual knowledge of his whereabouts.

The Court: You may answer him, Chief Moore.

Chief Jamie Moore: Your Honor, I think it would be possibly after 3:00 o'clock before we can get it together. It will take some little time.

Mr. Shores: That will be alright, then.

Q. Let's get back to the Easter march. Was you there when they left the Church for the march?

A. I was at 11th—no, I was at 12th Street and 6th Avenue, North when they left the Church.

Q. Do you know how many were in that procession?

A. I don't know at the particular time they left the Church. I can estimate that at the time I arrived at 11th Street and 5th Alley, North there were approximately three or four hundred, I would say.

Q. In the march or in the crowd?

A. In an actual procession down the street and on both sidewalks.

Q. Were these any of the respondents in this line of march?

A. To identify all of the ones that were arrested at that time, I could not. The group on my side of the sidewalk did not include the ministers that were leading the group. They were going down the west side of the sidewalk on 11th Street.

Q. Where were the arrests made in connection with this incident?

A. The entire group ran into the alley at 5th Alley and 11th Street going west. There were motor scouts that were in the immediate vicinity and the group made a turn back toward 6th Avenue. They were arrested between 5th Alley and on up onto 6th Avenue.

Q. Were they arrested in the street or in somebody's yard?

A. I would say most of them were arrested in the fields that they cut through between 5th Alley and 6th Avenue, [fol. 224] North. They were headed back toward 6th Avenue.

Q. Do you know whether that is public property or private property?

A. I would say that it would be private property. I have no actual knowledge of that.

Q. Was you present when they were arrested?

A. I was present when they were apprehended. Where the march took place was on public property.

Q. Were you present when they were invited to come on that property by the owner? Were you present when the owner told them they could come on that property?

A. No, I wasn't present.

Q. Did you arrest them on that property?

A. I didn't make an actual arrest on the property myself. Arrests were made by members of the uniformed department, mostly the traffic division.

Q. This is the march on Easter Sunday?

A. That is correct.

Q. And how many did you arrest that day?

A. It was in the twenties. Off hand I don't recall the exact number.

Q. Were there as many people gathered on Easter Sunday as there were gathered on Good Friday?

A. There were more.

Q. And you arrested only in the twenties that day?

A. That's right.

Q. And how many did you estimate were apart from those that were demonstrating, marching?

A. Between three and four hundred.

Q. And on Good Friday how many would you estimate were apart from the marching?

A. I would say approximately sixty. There were not too many left in the ranks on Good Friday. That is the ones marching in columns. There were a number of what I would call followers.

Q. Are you sure you arrested those that were marchers or—

[fol. 225] A. The ones that were marching in columns were the ones that were arrested on Good Friday, and there was fifty-one of those to my best recollection.

Q. And on Easter were the marchers, in like manner, those that were arrested?

A. They were marching in columns of two. The folks on the left side, they were marching in columns but the group in the street were just abreast, I would say. They wouldn't be in columns of twos. They would be columns of ever how many can get across the street. They were led by the children. The older people were behind them. And the group that was on the sidewalk on the left, I couldn't identify the individuals that were in that particular group, because my attention was with the other group that I had the immediate responsibility for stopping.

Q. Do you know why you arrested fewer on Easter than on Good Friday?

A. They scattered.

Q. Was it the marchers who scattered, or the crowd?

A. The marchers. The crowd, they were not involved in this particular march. These were members that were marching from the immediate vicinity of the Church when we arrived there.

Q. And I believe you—

A. The crowd had been gathering there, not in any semblance or any one group. They were just walking around. They were scattered around within a radius of two blocks every way.

Q. I believe you did state that any white people in the vicinity, you did have them moved on?

Q. We just didn't let any white vehicular traffic through.

Q. What about pedestrian traffic?

A. No whites.

Q. And you permitted Negroes to congregate in the vicinity of this Church?

A. Of course, that was the section that was predominantly Negro. There is some commercial business there but most of the individuals who did live in the residences there are Negroes.

[fol. 226] Q. Inspector Haley, as an experienced police officer, where there is some possibility of a hazard by a crowd or danger, like where there is a fire or traffic accident, and in this case where hundreds were probably gathering to watch fifteen or twenty, or twenty-five people march up the street, under those circumstances wouldn't you say it would have been good police practice to keep the people from congregating where there is possibly going to be a hazard.

A. If they had given us a little more accurate information, we would have cleaned the streets. Without that information and without their following the plans it is going to be an impossibility for us to move people out of their homes.

Q. Isn't it natural for people to congregate where they see police officers?

A. That is probably true. We moved our vehicles just as soon as we could after the arrests were made.

Q. Would you say that the vehicles and the presence of the officers themselves, would have a tendency to create a hazard and cause a crowd to gather?

A. As a matter of necessity—it would cause some curiosity, but it was a matter of necessity with the police department.

Q. But you did not disperse the curiosity seekers, did you?

A. We didn't move the people who were there in their homes and yards, that lived there. We didn't move the ones that were walking. It would have been a physical impossibility to have moved or to have determined the business of everyone of the fifteen hundred or two thousand people that were there with the limited force that we had.

Q. Wouldn't it have been possible before these fifteen hundred gathered, with your vehicles and men being in the vicinity three or four hours before these demonstrations?

A. A number were in the Church. I would say three or four hundred that were in the crowd were would have been in the Church. I don't know what the population is in that area, but we had our hands pretty full in trying to protect the group.

[fol. 227] Q. I believe you testified that you were able to identify Rev. M. L. King and the Rev. Abernathy as leaders of one of these marches, is that correct?

A. That was the Good Friday march, not on Easter Sunday. I didn't recognize them on Easter Sunday.

Q. Were you able to identify Wyatt Tee Walker in either of those marches?

A. No.

Q. Did you see Jim Bevils?

A. No, I didn't know him.

Q. Andrew Young?

A. I didn't know him or Bevils at that time. I have seen them since that time.

Q. Have you seen them to recognize them?

A. I did not recognize them as being in the group personally.

Q. Was Rev. F. L. Shuttlesworth in the group?

A. I didn't see F. L. Shuttlesworth in the group myself.

Mr. Shores: I believe that is, Your Honor.

**Redirect examination.**

**By Mr. McBee:**

**Q.** Inspector, the question was asked you if you were familiar with the ordinances of the City of Birmingham. Did you inquire whether or not these people engaging in these parades and marches and processions had a permit as provided by the City Ordinances?

**A.** On each occasion that I was able to talk to any of them prior to the arrests, I did.

**Q.** What did you find out?

**A.** They did not.

**Q.** Did not have them. Now, did you have any requests from Rev. King and Rev. Shuttlesworth and Rev. Abernathy or Rev. Walker to clear the crowds that were congregating around these Churches?

**A.** No.

**Q.** Have you ever at any time prior to either one of these [fol. 228] particular processions that have been testified about, have any requests from any of these officers of this particular movement, as they call it, to clear the crowd, or to keep the crowd from congregating or gathering in the vicinity, have any requests been received by you in connection with such a meeting?

**A.** No sir.

**Q.** He asked you about the crowd becoming unruly. Did it become unruly?

**A.** It did.

**Q.** Both times?

**A.** Yes, and belligerent. We did not make as many arrests as we could have if we had just faced the crowd, but we had other work to perform.

**Q.** You stated, I believe, that you saw in the newspapers, or press, or radio, or T V an announcement to the effect that Rev. King and Rev. Abernathy—I don't know whether he is a Reverend or not; Ralph Abernathy were going to engage in some sort of demonstration to get put in jail, is that right?

Mr. Shores: I object. That would be hearsay, Your Honor.

Mr. McBee: If it comes out in the press, we think that is advertising what they intend to do.

The Court: Sustain, I don't think that would be the best evidence. He can introduce any exhibit he might have with reference to that.

Q. Now, you were asked about your twenty-five years experience as a police officer and whether or not an unruly crowd or a crowd would likely gather in response to the presence of police officers or police vehicles. I will ask you whether or not assuming that an advertisement had come out over the radio or T V, or through various medium of news that a march was going to be made and that those men were going to go to jail on Good Friday, would that in your judgment and opinion increase a crowd and cause a crowd to gather?

Mr. Greenberg: I object to that. He is asking him something that is not in evidence.

[fol. 229] The Court: Well, I assume he is asking for an expert opinion on the part of a witness who has twenty-five years experience.

Q. I will ask you whether or not it is your experience in twenty-five years on the police force in dealing with this problem of racial tension that publicity of that kind is calculated to bring into the City of Birmingham people from the white race who might also be intent upon doing some violation of the law?

Mr. Greenberg: I object to that hypothetical question, Your Honor. No such evidence has been offered.

The Court: Sustain as to whether it is calculated to bring. He can give us his experience on the matter.

Q. In your judgment and experience, is that a reasonable probability that it will bring into the City of Birmingham people of the white race who would be inclined to engage in possible unlawful acts and—

Mr. Greenberg: Object. Furthermore, the fact that someone else might—

The Court: Sustain the objection. This witness can testify from his experience what has happened in the past.

Q. Alright, will you elaborate from your experience from incidences that have happened in the past when these race demonstrations or sit-ins or whatever you might term them, from your experience what has happened with reference to outsiders coming into the City of Birmingham and causing trouble.

Mr. Greenberg: Same objection.

The Court: Overrule.

A. It has been our experience that it has drawn outside agitators. Beginning with the so-called "Freedom Riders", we had approximately three or four hundred that I didn't recognize as Birmingham men, some we recognized as coming from Anniston and adjoining counties here. Some that we knew as race agitators. They were around the Greyhound Bus Station in particular.

Q. You stated you had in police measures decided upon and did block to white vehicular and pedestrian traffic the [fol. 230] areas where these crowds were congregating. Were the places where that was done, in your judgment and experience as a police officer of twenty-five years, were those reasonable precautions to prevent unlawful incidents from occurring?

A. It was a must.

Q. Inspector, you stated that some arrests occurred in connection with the incident in the 1700 block and another incident in the alley there, that some question was raised about somebody inviting these people to come upon their property. Did you arrest them for going on somebody's property?

A. No.

Q. What did you arrest them for? What were they charged with?

A. Parading without a permit.

Q. Was that on a public street that—

A. The offense was committed on public property. The arrests, most of them, were made on private property.

Q. Did you continue in pursuit of these people that had been in violation of the City Ordinances at the time they were arrested?

A. Yes.

Q. And were they arrested immediately in what is sometimes referred to as hot pursuit?

A. That is correct.

Q. What were the objectives of these marches, the one on Good Friday and the one Easter Sunday, where were they going?

A. The one on Good Friday, it was our information that it was a march on the City Hall. The one on Easter Sunday, our information was that it was marching on the City Jail.

Mr. McBee: I believe that is all.

Recross examination.

By Mr. Shores:

Q. Inspector, did they have any fine for placards indicating what they were protesting in these marches?

A. Not on the three that have been asked about. That is the one on Good Friday and Easter Sunday.

[fol. 231] Q. Were there any expressions as to what they were protesting as you apprehended these defendants?

A. I couldn't see any purpose in it myself. The information that we have about their going to the City Hall, I couldn't see any purpose in that since it was Sunday and it was closed. We have had that information for two or three Sundays, so I don't know what their purpose is.

Q. Did you question any of them as to what they were protesting?

A. I didn't interview them personally. Many of them were interviewed in the City Jail by members of the detective department.

Q. Do you know whether or not there were any requests for a permit to parade?

A. I received a call from Wyatt Tee Walker. I am not sure of the date. He said he was representing Rev. King—this first one, what, is his initials?

Q. M. L.?

A. Yes.

Martin Luther, and he said he was giving us official notice that they were going to march on the City Hall and he set out a time. He said at high noon. That was the Good Friday march. I instructed him that that would be in my opinion a violation of the City Ordinance if they were marching without a permit.

Q. Did you receive any other request or do you know of any other request for permits?

A. I know one that was received by Chief Moore and Commissioner Connor. I don't have the telegram. I just know that the contents—

Mr. McBee: I object.

Q. Just what type parade or procession may one obtain a permit for?

Mr. McBee: I object. That is not his responsibility. The law sets out when and how to get a permit.

The Court: Sustained.

Mr. Shores: He said he was familiar with the ordinances and we are trying to bring out what, in his years of experience, just what a parade is; a group of school children walking up the street to the Museum.

[fol. 232] The Court: Of course, this Court takes judicial knowledge of the ordinances of the City of Birmingham.

Mr. Shores: He arrested them for violating them. We would just like to know as to how he determined the violation.

The Court: I think the only question was did they or did they not have a permit.

Mr. Shores: And whether or not this was a parade or whether a group of a hundred or so children walking along together with a teacher or a friend—would you understand to us what your understanding of a parade is?

Mr. McBee: What his understanding is? We object to it.

The Court: Sustain.

Mr. Shores: Your Honor, what we are trying to find out is whether the law is being equally applied or whether it is being applied in a discriminatory manner against certain groups.

The Court: The Court has already passed on that question with its injunction.

Mr. Greenberg: We were wondering whether walking down the street in like groups—

Q. For like groups, walking down the street in like manner, such as groups of school children—

Mr. McBee: Object to that, Your Honor, and note that the question of a permit is vested in the governing body of the City of Birmingham. It is not vested in this man and he is not responsible either as a matter of law or moral or anything else for what may be required of a person who requests a permit. That is a legislative matter vested in the governing body of the City by City Ordinance, and what this Officer may have seen or may not have seen would be entirely incompetent, irrelevant and immaterial in so far as violating the law and—

Mr. Shores: I will withdraw that and ask this question.

Q. Have you in your twenty-odd years of experience, yourself, do you know of your own knowledge of any other group of people similarly situated being arrested for parading without a license?

[fol. 233] Mr. McBee: I object to that. Whether this Officer knows or doesn't know of any arrests being made

wouldn't matter. If a thousand people violated the law without being arrested, it gives no excuse for a man that is arrested.

Mr. Shores: We just asked him if he knows.

Mr. McBee: We object to it.

The Court: Sustain the objection on the basis that the Court does not understand the terms "similarly situated."

Q. Have you ever arrested a group of school children walking toward the Museum or Auditorium and being led by a teacher or some other student, probably a hundred or more, have you ever arrested any such group for walking down the street.

Mr. McBee: May it please the Court, that is not and could not be a parade or procession under any circumstances; and I think the question answers itself that it's not customary to arrest a group of school children unless they are engaged in committing acts along with some agitators that constitute a violation of the law.

The Court: I will overrule the objection and allow him to answer.

A. I have seen various parades, and I do not recall having made arrests for any parade that had a permit.

Q. Do you regularly require all groups that you see marching to have permits?

A. We get notice of it in the Chief's office through regular channels because parades do constitute a traffic problem and we have to make preparations for it.

Q. That is for any sort of parade?

A. That is for any legal parade.

Q. You say any legal parade; that is the question we are trying here. What is a legal parade?

Mr. McBee: I object to it.

Mr. Shores: He made the statement whether or not it was a legal parade. For these children, two or three hundred of them, to be marching in twos to go to the Audi-

[fol. 234] torium for a symphony program, do they have to get a permit to march to the Auditorium?

Mr. Breckenridge: Your Honor, for ought that appears there has never been such a procession. It is incompetent, irrelevant and immaterial.

The Court: I will sustain the objection unless it is related to some particular matter that the witness is familiar with and has knowledge of.

Q. Have you ever seen school children marching to the Auditorium or Museum or City Hall from the bus, after getting out of the bus?

A. Arthur, I don't interpret that as meaning a march.

Q. The Judge doesn't want you to interpret. I just asked you if you had seen that?

A. I have seen them walking to the Auditorium. I have never seen them in columns or marching in the manner that these were. These were dressed in robes. That is the leaders were. It was an announced parade. I am not sure, but—

Q. Isn't what is customarily known as parades something with bands and signs and—

Mr. Breckenridge: I object.

The Court: Sustained.

[fol. 235] Q. Do you know of any other groups that you have seen in columns?

A. I don't recall any marching in unison similar to these marchers that we have had of recent date. I have seen crowds going to ball games, but it is not in columns. It will be in ones or maybe threes or fours, but they are not marching in step and not going altogether. In other words, it would be a group of people walking to an event such as a ball game, or as you stated, to school, and so forth. Yes, I have seen them walking, but I have never seen them marching in unison and in columns similar to that.

Q. Was it your determination to make these arrests or did you have orders to make arrests of individuals whom you saw marching in twos coming out of the churches?

Mr. Breckenridge: We object to that, Your Honor. The Code itself places the responsibility on the police officer to arrest for a violation of law when and where he sees it.

Mr. Shores: It is a responsibility of his to keep crowds moving when he sees them.

The Court: Overrule.

Mr. Breckenridge: We except.

A. Not on specific orders. It was knowledge that on those specific dates that a parade was to be held and we did make special assignments for that purpose.

Q. I believe you made the general statement you had knowledge of violations. Now, can you be specific as to what knowledge you had that violations would be committed?

A. What statement are you referring to? Wyatt Tee Walker called me personally and told me he was calling for Martin Luther King and said they intended to parade to the City Hall at high noon, or 12:15.

Q. Did he use the word "parade" or say he intended to violate—

A. He didn't say he intended to violate the law; he said they intended to make a march on City Hall at 12:15, and I told him that in my opinion that would be a violation of the City ordinance and instructed him that unless he obtained a permit for the same we would have to arrest him, and asked him to convey that information to Martin Luther.

[fol. 236] Q. Was that when he sent the telegram?

A. No. That was a telephone conversation.

Q. Do you know when the telegram was sent?

A. Subsequent to that. I believe it was with reference to another intended parade.

Q. Now, I believe you stated that you had been forewarned that Reverend King and Reverend Abernathy were going to jail and you considered that sufficient enough to gather a large crowd?

Mr. McBee: Wait a minute, Your Honor. I haven't understood any such testimony as that and I move to exclude that statement.

Mr. Shores: Oh, yes, you asked him yourself about the newspaper items, that he was forewarned by reading the newspapers that they would be ready to go to jail or would go to jail.

Mr. Breckenridge: Your Honor, his objection to that was sustained, the evidence of what he saw in the newspaper.

The Court: I will have to sustain the objection to your question. Your question had to do with the fact he gathered the crowd, I don't know that that is the testimony.

Mr. Shores: No, not that he gathered the crowd.

Q. Did you testify you had been forewarned or had been notified through some means that Reverend King and Reverend Abernathy said they were ready to go to jail on Friday and you considered that that was sufficient to draw a crowd at the church?

A. I read a press release that they issued at the Gaston Motel on the 11th of April in which King—both the Kings, A. D. and Martin Luther—Shuttlesworth and others were present, it was read by Wyatt T. Walker, but the others made a speech also in which they said that they would not honor the Court's injunction, that they were going to violate it.

Q. That hasn't been brought out, that hasn't been mentioned before.

A. That is where I got my information.

Q. I am referring to the time when you said two of them [fol. 237] said they were prepared to go to jail on Friday.

A. If my recollection serves me right, that was at the specific time they made the statement.

Q. And you stated you considered that sufficient to draw a crowd, is that correct?

A. I think it was calculated to do that, yes.

Q. And when the crowd came you didn't disperse the crowd, did you?

A. Not from the private property or not from within the church or the church grounds.

Q. What about the streets?

A. We didn't have any in the streets at the particular time prior to the time the march started.

Q. What about the sidewalks?

A. The sidewalks were not blocked in a manner to prevent passage. There were Negroes of course coming and going. They were just milling about in the general vicinity.

Q. Milling about, and there was a crowd?

A. There was a crowd.

Q. During these demonstrations you have, unlike the freedom riders when there was considerable violence which you referred to, that is, the freedom rides, on the date when the freedom riders came in which you said there were a number of outside white agitators, possibly three hundred that you recognized, now, have you recognized any such outside white agitators during these demonstrations?

A. Not personally. I haven't been on the outskirts. I have seen some that I didn't like the looks of, whether you want to say it is recognition or not, and I have sent some away personally, but as far as me recognizing any group from Anniston or Montgomery or any other particular place, I have not because that work has been handled by the Traffic Division and it has a specific purpose, it is to keep them from getting into the vicinity of these meetings where they might cause some trouble.

Q. Have you arrested any white people?

A. We have had no occasion to because there has been [fol. 238] no violations committed. There have been no direct conflict or any direct contact between any white or black since this has started to my knowledge.

Q. And there hasn't been any violence at all?

A. That is between any outsider. Now, there has been some violence at the scene of some of these. We have had a police officer or so hurt and had a newspaper man hurt and had some City property destroyed, but we have had no contact between any white or any colored to my knowledge.

Q. In other words, the Police Department has been able to maintain law and order?

A. By the hardest.

Q. But you maintained it, notwithstanding it being hard?

A. That's right. It has depleted our sources a great deal.

Q. These incidents of rock throwing, what other violence can you mention that has occurred during these demonstrations besides the rock throwing? Did the rock throwing come from any members of the demonstrators that you know of?

A. Yes, there were three arrested for rock throwing. How many more were throwing I have no knowledge of.

Q. Were they marchers or from the general public?

A. I would say it was from the ones that had been stirred up on the outside.

Q. And not the marchers?

A. Well, we didn't get all the marchers. Whether or not they originally started in the march I couldn't say because I couldn't identify three or four hundred people.

Q. Wasn't this rock throwing done after these people had marched and been arrested?

A. While they were still there in the streets and the Negroes on the corner were cheering for the marchers, I suppose, but it happened after this Negro woman had bitten the police officer and had given them a good bit of trouble in making an arrest. I would say she was not a member of the marchers because she was not dressed in a manner that I think she would be had she been going to [fol. 239] church. I think she would have been probably one that lived around there somewhere or one that just joined the group.

Q. But the rocks were thrown after the people were arrested?

A. Yes, after the marchers were arrested or after twenty odd of them were arrested. There were three hundred or three hundred fifty that were not arrested.

Q. During the whole demonstration this was the only incident of violence, this rock throwing?

A. No. We had this woman that resisted arrest.

Q. You testified, though, she wasn't a part of this marching group?

A. Well, she was a part of the furor that was created subsequent to the arrest or attendant with the arrest and at the same time.

Q. That resisting arrest grew out of arresting her?

A. What grew out of it? I don't understand.

Q. The incidents of violence here was this woman resisting arrest, is that correct?

A. She did resist arrest, yes.

Q. Were there any other incidents of violence during the whole demonstration?

A. Well, the rock throwing.

Q. I mean, other than the rock throwing and the woman resisting arrest?

A. I don't believe that there was anyone else at that particular time charged with—

Q. Although it was a hard job,—

A. There were three of them charged with assault with intent to murder, but the charge was later reduced, and that was the rock throwing.

Q. And although it was a hard job, the Police Department has maintained law and order?

A. Well, I am thankful.

Mr. Shores: That is all.

[fol. 240]      Redirect examination.

By Mr. McBee:

Q. You said, I believe, that the leaders of these parades were dressed how?

A. In robes.

Q. What kind of robes?

A. Long, black, flowing robes. I don't know what denomination it is supposed to designate, but it is not a business suit or anything like that. It is a robe that they were wearing over their suits.

Q. Now, the question has been asked whether or not you feel like the Police Department has been pretty successful in keeping an undue amount of violence and strife and trouble away from the City of Birmingham on account of these incidents that you have referred to. If you had not taken the precautions that you took and taken the action you did take, in your judgment and opinion would that have been true?

A. In my judgment we would have had some serious trouble, Mr. McBee.

Mr. McBee: That is all.

Mr. Shores: No further questions.

The Court: We will recess at this time until 1:45.

(Whereupon at 12:00 noon the proceedings were in recess until 1:45 P.M.)

[fol. 241] J. WALTER JOHNSON, JR., called as a witness, being duly sworn, was examined and testified as follows:

Direct examination.

By Mr. McBee:

Q. Would you give your name, please?

A. J. Walter Johnson, Jr.

Q. J. Walton?

A. Walter.

Q. What is your occupation, Mr. Johnson, please, sir?

A. News man for Associated Press.

Q. I didn't quite get that first word.

A. News man, or reporter, either one.

The Court: Just a moment, Mr. McBee. Let me see if we can get this straightened out now. How about holding that door. We have already started. All right.

Q. Mr. Johnson, did you—were you in Birmingham on the 11th day of April of this year?

A. Yes, I was.

Q. And in order to orient you, were you present at a news conference which was conducted at the Gaston Motel?

A. Yes.

Q. When that news conference was held, did you see any written document, or any written paper?

A. No, I did not.

Q. You didn't get one of the written statements?

A. No, sir. I got to the news conference later. Someone else was covering it.

Q. I see, and you didn't get to see that?

A. No, sir.

Q. Do you remember at or about the time that the news conference adjourned whether or not anything was said about a further meeting that night?

A. There was to be a meeting that night, yes.

Q. What, if anything, was said about those present attending the meeting?

[fol. 242] Mr. Greenberg: We object. Said by whom, or about what?

The Court: Sustained, unless it can be identified as to who was present at this particular conference.

Q. Do you know who was present?

A. Yes, sir.

Q. Who was?

A. Martin Luther King, Ralph Abernathy, and several faces I did not know.

Q. You know those two?

A. I know those two.

Q. Did you know Rev. Shuttlesworth?

A. Yes. I don't remember if he was present at the conference—yes, I am sure he was.

Q. All right, now, with reference to the meeting, do you know who, if any, of those made the statement that you were invited to come to the meeting that night?

A. Repeat that question, please.

Q. I say do you know which, if any, of those that you have named made the statement that you were invited to the meeting that night?

Mr. Shores: Your Honor, we object. It has not been established there was a statement made.

The Court: Objection overruled.

A. Yes, there was to be a meeting. I got no formal invitation, no. There was to be a meeting that night, and I had been covering them during the week, so I went to that.

Q. All right, you don't recall about any of those present inviting you, the press, and others there to attend?

A. They may have. It was not a general thing. I mean it was a general thing, that we could come.

Q. Just a general thing?

A. Just a general invitation.

Q. You didn't get a specific private written invitation of your own?

[fol. 243] A. No. No.

Q. Now, did you go to the meeting which was held on the night of the 11th of April?

A. Yes.

Q. Where was that meeting held?

A. It was at one of the Negro churches. I am not sure which one; I get them confused.

Q. Do you remember whether or not at that meeting—on that occasion—by the way, did you make notes of the meeting?

A. Yes.

Q. What took place there?

A. They had a prayer service, singing, collections. That took up a large part of the first part. Then, a man, I believe his name is James Bevel—I think James is his first name.

Q. James Bevel?

A. Yes.

Q. All right, what did he do?

A. He had the sermon. He spoke.

Q. All right.

A. After the sermon—

Q. To get back, now, while we are at it, what did James Bevel talk about?

A. May I check these to make sure?

Q. Yes, sir, sure. Those were notes that were made at the time that this was going on?

A. Yes, sir, these notes made at the meeting.

Q. He just said he made them. Them are his notes.

A. I am going to have to backtrack here a minute. James Bevels spoke on Friday night.

Q. It was not Thursday night, but Friday night?

A. It was Friday night when Bevels spoke.

Q. Did they have any speakers on Thursday night?

A. Yes, they did, including Ralph Abernathy, and Martin Luther King, Jr.

[fol. 244] Q. You say Ralph Abernathy and Martin Luther King, Jr. spoke on Thursday night? That is to say the 11th?

A. Yes.

Q. All right, now, what did they say, if anything? Did the question of injunction come up in their discussions, or in their statements?

A. The word "injunction", itself, never did come up that I can remember or see offhand. They did speak of boycotts, and boycott was included with the entire movement.

Q. All right, they spoke of boycotts, and boycotts were included with the entire movement. All right.

A. Included in those boycotts—do you want quotes?

Q. I beg your pardon? I didn't hear what you said.

The Court: He said do you want his quotes.

Q. Yes, I would like to have your quotes, if you have them.

A. Abernathy, while he was speaking, he said—one thing he said, "If you have to use the rest room, be a first class citizen, go where Bull goes. I want to see it anyway."

Q. If you have to use the rest room, what?

A. "Go where Bull goes. I want to see it anyway."

Q. All right, was that all he said?

A. He was making a few comments about Bull Connor, but I don't have anything definite on that.

Q. That was Ralph Abernathy?

A. That was Ralph Abernathy.

Q. All right.

A. Martin Luther King also spoke.

Q. All right.

A. He was advocating boycott of all stores except by necessity, such as food, and medicine through the Easter Season.

Q. All right.

A. And after the Easter Season.

Q. All right.

A. He was advocating to keep on with this boycott until, [fol. 245] as he put it, the walls of segregation crumbled.

Q. All right.

A. Keeping on until the job is done.

Q. All right, is that all he said?

A. No. He said "Stay out of stores until Negroes can use the lunch counters", that also he was checking these boycotts, and prove them to be successful in the downtown stores, advocating spending money where they can buy jobs, saying don't buy segregation.

Q. All right.

A. This boycott, they said, was to go into the Savings and Loan, Insurance, and so forth outside of the stores, the downtown stores, themselves.

Q. All right.

A. Later, he was saying Al Hibler, Mr. Al Hibler, the blind Negro singer—

Q. All right.

A. Hibler was to have made a march on Wednesday, which he did, a demonstration, and he was not arrested. Martin Luther King and Ralph Abernathy were to follow on Thursday—wait, I am sorry, they were to go on Tuesday, and he was to follow on Wednesday, so they did not arrest Hibler that day. Therefore, Hibler marched, or demonstrated again on Thursday.

Mr. Shores: Your Honor, I don't believe those answers are responsive. I think he is asking about the meeting, and he is telling now what happened.

Mr. McBee: He is telling about what they said happened.

The Court: If it is restricted to what they said on this occasion, I will overrule. Is that what was said on the occasion that you are stating?

A. Yes. They said since Hibler was not arrested they would give him another chance, so they would wait until Good Friday.

Q. Who was going to wait until Good Friday?

A. Abernathy and King.

Q. Abernathy and King were going to wait until Good Friday?

[fol. 246] A. Yes, and on Thursday night, Martin Luther King said—

Mr. Shores: I wonder if he could identify these Thursday nights by date?

A. That is the 11th.

Q. Go ahead.

A. He said Abernathy and I was—that is Martin Luther King speaking, "Abernathy and I will make our move on Good Friday, symbolizing the day Jesus hung on the cross."

Q. All right.

A. He also said, "We must love all white persons, we must love even Bull Connor." He was talking about the white persons as people, and not as they supposed the general white person to feel about segregation.

Q. All right.

A. He also said that where, he said, "We will have to force the certain cities to say 'we have to do something', these people are determined to be free."

Q. All right, did Abernathy say anything about what he was going to do?

Mr. Shores: We object to his leading. He could ask what did he say.

Q. I just asked if Abernathy did.

A. Yes, Abernathy did speak. I have more quotes on him. Abernathy was saying, "I am against white supremacy, I am against black supremacy, I am against any kind of racial supremacy." He said, "We have whites and Negroes standing in my way to be free." He was talking about several people being arrested, except Al Hibler, and he said, "That is discrimination, and we don't like it", speaking of discriminating against Hibler for not being arrested.

Q. In other words, Hibler was discriminated against because he wasn't arrested, is that what he was talking about?

A. Yes, that was the gist of what they said, the two of them.

Q. Was there any occasion when any of them used the word "march" at all?

[fol. 247] A. Not that I have, no, sir.

Q. Let me show you a news release here and see if you can identify it.

A. No, I cannot. That is a United Press International story.

Q. Were you at the same meeting the United Press International was covering?

A. I didn't think they were there that night. I didn't see any of them there that night at that meeting.

Q. Do you see in there anything they quote? We will say they undertook to quote Martin Luther King verbatim?

Mr. Greenberg: May we have an objection to that, Your Honor? This is a quote which someone else is purported to have taken down, which is not authenticated. The man said he didn't see anyone else there. I couldn't see how it possibly could come in.

The Court: Sustain the objection.

Mr. McBee: Your Honor, I would like to call the Court's attention and ask the privilege of cross examining the testimony the witness is giving from the witness stand. It is very varied and different, and much different from the statement he made immediately before he went onto the

stand. I would like the privilege of cross examining the witness, if I may.

Mr. Shores: Your Honor, we object to his own witness, his cross examining his own witness. He hasn't laid a predicate for showing the witness is a hostile witness, and he is not failing to answer his questions. He has answered every question.

Mr. McBee: I am very much surprised at the witness' testimony, because his testimony is very different—his statement is very different.

The Court: If you seek to lay such a predicate, I would be glad to consider it, but I don't think at this time I can.

Mr. McBee: All right.

Q. I will ask you if you did not in—while being interrogated by Mr. Thompson of the City Legal Department, and also in the further discussions and interview with me, [fel. 248] if you did not tell him that this was a substantially correct statement of what was said by Martin Luther King on this occasion?

Mr. Greenberg: I object, Your Honor. That calls for hearsay. This calls for what the witness is supposed to have said on another occasion.

Q. Didn't you make this statement back in the witness room immediately before you were put on the witness stand?

A. You are talking about this part, or the part marked out, or what?

Q. I am talking about right here (indicating). Did you not say that was a correct statement in substance of what—

A. You are asking me about the meeting Thursday night.

Mr. Greenberg: Could we identify that statement?

The Court: I think it should be identified. It has been asked to be identified, Mr. McBee, if you will.

Q. Is this not the—is this memorandum not a memorandum written in your presence just before you took the stand?

A. True.

Q. And was it not written by Mr. Bill Thompson, one of the assistant city attorneys?

A. True.

Q. Sitting right at the table there?

A. Yes.

Q. Did you not tell him at the time that this was a correct statement, or in substance what you heard Mr.—Rev. Martin Luther King say on the occasion of the meeting on the night of the 11th of April at the church when you attended the meeting?

A. No, sir.

Mr. Shores: I object. That calls for hearsay.

A. No, sir.

The Court: Overruled.

A. Are you talking about this (indicating)? He said, "Injunction, or no injunction, we are going to march."

Q. Yes.

[fol. 249] A. I told him this was not a direct quote from me. He must have misunderstood me.

Q. You said that wasn't a direct quote from you?

A. No, I do not have that discussion quoted anywhere, not from that meeting on Thursday night.

Q. Did you have it from Friday night?

A. Friday night they were in jail.

Q. You didn't have any remarks at all from Rev. Martin Luther King on Friday night?

A. Friday night, no, sir. This is where you are talking about after they were served with the papers.

Q. After they were served with the papers where?

A. After they were served with the papers at the Gaston Motel.

Q. You mean to say you recall this statement being made at the press release, the press conference?

A. At the press conference, no, sir. Now, this injunction was passed in the middle of the night. The press conference came the next day.

Q. Were you present when the injunction was served?

A. Yes, I was.

Q. You were present, and that was in the middle of the night, you say?

A. Yes.

Q. Was this remark made then at that time?

A. That direct quote, they were marching at the—just a minute, and I will be happy to find it. He said this direct—this is what Shuttlesworth said, speaking of the injunction handed to him: "This is a flagrant denial of our constitutional privileges."

Q. All right.

A. "In no way will this retard the thrust of this movement." He said they would have to study the details. He said, "An Alabama injunction is used to misuse certain constitutional privileges that will never be trampled on by an injunction. That is what they were saying that particular night right after the injunction.

[fol. 250] Q. All right, who was present there at that time?

A. Ralph Abernathy was there, Martin Luther King, Mr. Shuttlesworth, Wyatt Tee Walker, and there was some others I did not recognize, did not know them.

Q. Some you did not know?

A. Some I did not know. Abernathy made a statement at that time also. He said, "An injunction nor anything else will stop the Negro from obtaining citizenship in his march for freedom."

Q. He said an injunction will stop it?

A. He said, "An injunction nor anything else". In other words, nothing would stop them.

Q. Nothing will stop them?

A. Nothing will stop them on their march for freedom.

Q. That was on the Wednesday night when they were served, or rather Thursday morning?

A. Early Thursday morning when they were served with the injunction. Does that clarify it?

Q. Yes, sir. Thank you. Now, you stated that you were in the room, or rather in the conference on Thursday night, and you stated that Rev. King made a statement to the effect they would make the move on Friday?

A. Yes.

Q. Now, did anything else happen at that meeting? I mean, was any volunteers called for, or did they make any effort to—

Mr. Shores: We object to his leading the witness.

The Court: Sustained. I don't believe I know which meeting you have reference to.

Mr. McBee: Withdraw the question.

Q. Referring to the night of Thursday, which would be April 11th, at the church meeting, what, if anything, was done or said to enlist volunteers?

A. They called for volunteers that night.

Mr. Shores: We object to "they".

The Court: Sustained.

[fol. 251] Q. You could tell whether or not some of the people there who were speaking, if you know their names, what their names were?

A. Well, that particular night, the main speech was given by Mr. Al Hibler.

Q. All right.

A. I do not remember who actually made this call for the marchers, the particular person. One of those women were in the front of the church signing people up. By my own count, they signed up 27 people to follow Al Hibler on Friday.

Q. All right, 27 people were signed up in the church?

A. That was by my own count.

Q. Pardon?

A. I say I counted 27.

Q. All right. When they signed up, did anybody there present in this meeting encourage them to sign up?

Mr. Shores: We object to anybody encouraging them. That is too general. Anybody is not a party to this injunction suit.

The Court: Sustained unless it be identified as being one of these respondents.

Q. All right. Can you identify any of these respondents as participating in it?

A. Yes, Al Hibler, and—that was on Friday. As I remember on that Thursday night, it was King, and Abernathy left the meeting early. They had some letters to write.

Q. Who else remained there?

A. There was several people still on the platform I did not recognize.

Q. Were any different people on the platform after they left from what were on the platform when they left?

A. Oh, yes, several people.

Q. What is that?

A. Several people were still up there.

Q. I see, but did any new ones come up, or just the same [fol. 252] ones stay there?

A. I can't remember if it was before, or after, but they did have a Black Muslim and Catholic Priest came up.

Q. You say they had a Black Muslim? What do you base that statement on?

Mr. Shores: We object to a statement about any Black Muslim. We are not trying any Black Muslims here.

Mr. McBee: We are going to mention some Black Muslims later on.

Mr. Shores: They are not a party to this citation. Ask him whether or not these respondents were present there.

The Court: Unless it can be shown these respondents were present and had something to do with the meeting at that time—

Mr. McBee: I thought we had shown this meeting was called by the respondents and the press conference that

afternoon, and it was obviously a meeting of this organization.

Mr. Shores: Your Honor, I didn't understand there was a calling. I didn't hear no testimony this meeting was called by any of these respondents.

Mr. McBee: If there is no evidence in the record so far, Your Honor, I will promise you there will be.

Mr. Shores: At that time, Your Honor, I think it will be time enough to ask if these respondents called a meeting.

The Court: I don't see any sense going into this meeting, or a meeting of the Muslims that didn't violate this injunction, Mr. McBee, and I would like to stick to this particular issue.

Mr. McBee: All right, Your Honor.

Q. Now, do you recall anything else that was said or done by those—now, when Rev. King left, and Abernathy left, you say that a new group of people came up on the platform, or did the same ones stay there?

A. No, sir, it was generally the same group. A couple more did come up.

Q. But, generally, the same group stayed there in charge [fol. 253] of the meeting?

A. Yes.

Q. And they remained on until the meeting was called to an end, or did you stay that long?

A. I left a little before the end of the meeting. I left as it was beginning to break up.

Q. All right, was anything said about cards, membership cards?

A. Yes. Again, I will have to use the non-discript—I believe it was Rev. Young. I am not sure on that.

Mr. Greenberg: May we object to the remainder of what this witness is going to say?

Mr. McBee: He said in his best judgment it was Rev. Young.

A. I am sure I heard the statement. I am not sure off-hand what specific person made it.

The Court: Are you acquainted with Rev. Young so you would know him by identification?

A. Yes, I am.

The Court: Is Rev. Young in the courtroom?

[fol. 254] The Court: Is it your best judgment that the Rev. Young made the statement?

A. It is my best judgment, but, as I say, I cannot swear to that.

Mr. Shores: We object to it then, Your Honor.

Mr. McBee: I think the witness is probably confused about the degree required of him testifying. If he can testify in his best judgment that it was, then he is entitled to testify to that effect and the Judge may weigh it and give it what weight he desires to.

Mr. Greenberg: The witness has said he cannot swear to it and he testified under oath.

The Court: The Court will receive it as evidence of what took place in the meeting and with the statement the witness made as to the identification of the person making it and will be taken into consideration in that light.

Q. You may go ahead.

A. Thank you. He was saying that everyone in this movement should have a card—should carry a card. They said that each one of them should carry one of these membership cards—everyone in the demonstration, everyone participating at all should be carrying a card—in fact, every Negro, as they put it, should be carrying a card.

Q. Everyone participating and, in fact, every Negro should be carrying a card?

Mr. Shores: Your Honor, we object to his aiding and leading.

The Court: I think he is repeating what the witness has already said.

Q. Did they do anything about money?

A. Yes. They always took up a collection.

Mr. Shores: Your Honor, we object to that. What does money have to do with these respondents violating an injunction, and to whom is he referring when he says "they"?

A. I am speaking of the leaders, the people on the platform.

The Court: The objection is overruled.

[fol. 255] A. The people on the platform, they took up a collection each night by having the people in the congregation file by and put money in the plates in the front—in collection plates. This was a part of the general service that they had.

Q. Did that take place at the prayer meeting or after the speeches?

A. This took place generally at the first of the meeting when they first came in.

Q. Are you talking about the prayer meeting part or the part when they got through speaking?

A. The prayer meeting part.

Q. Just all invited to come down in front, is that the way they did it?

A. Yes.

Q. Now, is that all that you recall that happened on Thursday night?

A. Yes, sir, it is.

Q. Did anything happen on Friday night?

A. Yes, sir. They opened the meeting in the same general way—

Mr. Shores: Your Honor, we object to "they opened the meeting."

A. The meeting was opened in the same general way with the prayer service.

Mr. Shores: We don't know by whom. We would like to know what meeting and by whom.

Q. Will you tell us who was there, Mr. Johnson?

A. Reverend Young was there.

The Court: This occasion is Friday?

A. This is Good Friday night. The Rev. James Bevil was there. Wyatt Tee Walker—those were the only ones I believe I have who spoke that night.

Q. Those were the speakers?

A. Those were the ones who spoke, yes, sir.

Q. Would you tell us then what they said when they spoke?

A. The Rev. Young said, "The white in Mississippi have [fol. 256] more sense than the white folks in Alabama."

Q. All right.

A. He did say, "City police are learning to do their duty, they can arrest people without beating them now."

Q. "City police can arrest people without beating them"?

A. "Without beating them."

James Bevil—he introduced James Bevil and he spoke. He said whenever he thinks of bombings and shootings and beatings of Negroes he thinks of Birmingham.

Q. All right.

A. He said, "The Negroes don't have to worry about doing anything." He said, "Just leave the white people alone and white people will always do something foolish."

He was speaking of Birmingham being a sick city.

Q. Did he say what made it sick?

A. He was talking about the people and segregation, segregation makes it sick.

Q. That is what made it sick?

A. He also said, "A lot of Negroes are sick and don't want to get well." Speaking of this he was saying the movement has as many Negroes against them as it does white.

Q. Has as many Negroes against them?

A. Against the movement. He said, "The Negro can only free himself, white can't do it because white don't own Negro's freedom."

Speaking on the boycott, he was saying, "If God can feed cockroaches, he can feed me."

He said, "Bull—" speaking of Bull Connor— "Bull can make us believe he controls our freedom; he doesn't."

He also said, "Locking up the leader of this movement won't do any good; they don't have sense enough to know that God is the leader." In this instance he was speaking about the Birmingham Police Department when he said "they."

Q. "Locking up the leader won't do any good"?

A. He said, "Locking up the leaders of this movement [fol. 257] won't do any good; they don't have sense enough to know God is the leader."

He also said, "Everything is against the law if the white folks don't want it."

He said, "We have been setting here for years and years, all we have to do is get up and start walking." That was the general theme of his talk, "to get up and start walking."

Q. "Get up and start walking"?

A. He said that he personally was tired of being walked on by some "white trash."

He asked the question, "Do you want your son to die in the electric chair for raping someone he had never seen? Then get up and start walking."

That was the end of his speech.

After that they sang several songs, "Freedom, Freedom, Freedom, Everybody Wants Freedom." And several people who they said had just come out of jail came in and led the singing—stood up in front of the church and led the singing.

Q. Who said that? You say some people came out of jail. Were they introduced as having just come out of jail?

A. Yes, they were. Rev. Young introduced them as just having come out of jail.

Q. All right.

A. There were about twenty of them who were leading the singing.

Young spoke for a few minutes after Bevil's speech, just a bare few minutes. He said, "We have demonstrated to the world the power of this movement; now to demonstrate its persistence." He did not elaborate.

Wyatt Tee Walker was the next speaker.

Q. All right. Wyatt Tee Walker was the next speaker?

A. He called for a meeting of all students the following morning which would be on a Saturday, students from grades 1 through graduate school. He said, "There is something we want to do with the student population of Birmingham. They can get a better education in five days in this jail than five months in these segregated schools."

[fol. 258] Q. He wanted the student population to go to jail, he said?

A. I repeat that quote. He said, "There is something we want to do with the student population of Birmingham. They can get better education in five days in this jail than five months in these segregated schools."

Q. All right.

A. He also was calling for people to go to church, to put on last Easter's clothes, since the boycott was on, put on last Easter's clothes and to meet at 9:30 at headquarters on Sunday morning to go to white churches.

Q. All right. Put on last year's clothes to go to white churches?

A. Go to white churches. Last Easter's clothes. He was saying to wear these Easter clothes so that the white people could not use the excuses of overalls to kick them out, or rather, to not let them in if they wore overalls.

He also said he was "looking for two dozen Negroes who are willing to die for me."

Q. Excuse me. I did not get that.

A. Two dozen Negroes who are willing to die for me.

Q. "Who are willing to die for me"?

A. Period.

Q. This is Wyatt Tee Walker?

A. Wyatt Tee Walker. He said, "I will need you eight to ten days." He did not elaborate.

Speaking of the inauguration to follow the next following Monday, he was calling for the Negroes to go out and welcome Boutwell, as he put it, "to wish Boutwell well. I am speaking in parables."

Q. "To wish Boutwell well"?

A. "Wish Boutwell well. I am speaking in parables."

Q. "To wish Boutwell well." Was that all that was said about going to wish Mr. Boutwell well?

A. That was all I have.

Q. Now, did he or any of the others call for any other volunteers?

A. He was calling for these students to meet the next [fol. 259] morning, and he was calling for the Sunday group to go to white churches, and he was calling for the ones to go welcome Boutwell in, wish Boutwell well. That is the only ones he called for.

Q. Those are the only ones he made mention of?

A. Right.

Q. Was any of the others at that time and occasion, that is, Young or any one of the other leaders who was there, making any requests for other volunteers?

A. No, sir, to the best of my memory.

Q. Now, at either of these meetings was anything mentioned about volunteering to go to jail?

A. Yes, that was mentioned at every meeting. They were recruiting people to go to jail—people who were willing to go to jail.

Q. Recruiting people willing to go to jail?

A. Yes.

Mr. McBee: You may take the witness.

Mr. Shores: Your Honor, may we have two minutes to consult with one of the respondents?

The Court: All right. We will take about a five minutes recess.

(Short recess.)

Cross examination.

By Mr. Shores:

Q. Mr. Johnson, I believe you said you heard Wyatt Tee Walker make this speech and a request for—was it twenty persons—"to die for him" or was it "to die for freedom"?

A. His quote was "two dozen."

Q. Two dozen?

A. "To die for me."

Q. Are you sure it was "for me" or "for freedom"?

A. He said, "for me."

Q. Was that said in a symbolic sense in your judgment?

Mr. McBee: We object to his interpreting the statement.

The Court: Sustained.

Mr. Shores: That is all.

(Witness excused.)

[fol. 260] LIEUTENANT WILLIE B. PAINTER, called as a witness, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. McBee:

Q. What is your correct name, sir?

A. Willie B. Painter.

Q. And what is your occupation?

A. I am an investigator with the Alabama Department of Public Safety.

Q. Have you been with that Department very long?

A. Fifteen years. Ten years as an investigator.

Q. During that time have you had occasion to become familiar with the organization that is known as the Southern Christian Leadership Conference?

A. Yes, sir, I have gained some knowledge of the organization.

Q. Have you had occasion to become acquainted with Wyatt Tee Walker and Martin Luther King, Jr.?

A. Yes, sir, I have.

Q. Are they officers in that organization?

A. Rev. King is president, Rev. Walker is executive director.

Q. Have you also had occasion to become familiar with the organization known as the Alabama Christian Movement for Human Rights?

A. Yes, sir.

Q. Do you know the leaders of that organization?

A. Rev. Shuttlesworth has been president for a considerable period of time.

Q. Do you know whether Gardner is the vice president of it?

A. I am not certain of that, sir.

Q. Do you know what relationship exists between those two organizations?

A. The Alabama Christian Movement for Human Rights is an affiliate organization of the Southern Christian Leadership Conference.

Q. Now, during the occasions on Good Friday and also [fol. 261] on Easter Sunday were you present in Birmingham at the time of the incidents, if any, occurred on either of those days relating to either of those movements or both of them?

A. Yes, sir, I was present on both days.

Q. All right. Now, let's first take up the occasion on the 12th which would be Good Friday. Would you relate what you saw take place on that occasion?

Mr. Shores: Your Honor, we object. That is a little general I believe, what took place and where and what time.

Mr. McBee: I may alleviate your worries about the matter. I am going to ask him to confine himself to this march or procession or whatever you might properly call it—or parade—which occurred on Good Friday and in which these organizations that you have just referred to are involved, or their leaders.

Mr. Shores: We object to those organizations, Your Honor. At the beginning of this trial Your Honor passed the action pertaining to these two organizations until May 6th. These two organizations are not on trial at this time.

Mr. McBee: That is true, Your Honor, but the leaders are on trial in this case, and if I understand the testimony of the witness so far—

The Court: The leaders as he has identified so far in his testimony are on trial in this particular citation.

Mr. Shores: That is correct, but he is asking about the Alabama Christian Movement for Human Rights and Southern Christian Leadership Conference which are not on trial.

The Court: To the extent the leaders are involved, I will overrule your objection.

Mr. Shores: We except.

A. I arrived in Birmingham at about noon on Friday, the 12th. I joined with other officers, including City detectives of the City of Birmingham, and other investigators of the Alabama Department of Public Safety. From that time we observed a crowd gathering outside a church. I am not positive of the name of the church. I believe it would be [fol. 262] St. Johns. It is on 6th Avenue I believe.

As the crowd continued gathering later Lieutenant Ralph Holmes and myself walked to a position across the street from the church. That would have been sometime in my judgment after 2:00 o'clock. While we were there observing the crowd—

Q. May I ask to interrupt you? How close did you get to the church?

A. We were standing directly across the street from the church.

Q. Was the street intervening between you and the church?

A. Yes. There were cars parked along the street and we were standing inside the cars, in so far as the street is concerned, rather than outside towards the sidewalk. We were actually standing in the edge of the street.

Q. All right.

A. We observed a late model automobile, I remember it to be a Ford, it came up in front of the church and Rev. Wyatt Tee Walker was driving the vehicle. The Rev. Martin Luther King, Jr., Ralph Abernathy, Fred Lee Shuttlesworth, and, as I remember, Bernard Lee and Dorothy Cotten departed the automobile and entered the church. Rev. Walker drove the automobile away from the scene at that time.

A short time thereafter within a period of several minutes a group came out of the church and began a march or parade in the direction of—

Q. I hear some coughing and I am missing some of that.

A. A short time thereafter a group came out of the church and began what appeared to be a parade or a march in the direction of downtown Birmingham.

Q. All right.

A. This group was led by Rev. Martin Luther King, Jr., Rev. Ralph Abernathy, Rev. Shuttlesworth, as I recall, Rev. Bernard Lee was also in the formation leading the group. There were several people following in this formation. As the group marched away from the church in the direction of downtown Birmingham a group of persons who had assembled along the sidewalk and the street followed this procession. This group of people would consist of several [fol. 263] hundred.

Q. Now, do you mean the marchers or the other group?

A. The group following the marchers. Actually the whole procession was going almost as a group. As the group came out of the church then the whole group of people who had assembled along the sidewalk followed along behind them and I think you could describe it as one procession.

**Q.** All right.

**A.** At a location—I am not sure again of the street number—the police had set up a blockade to block the street. That was near a park that again I am not certain of the exact location, but it would be near 17th Street and 6th Avenue.

Before the marchers arrived at this point they turned to the right and walked down by the side of the park for a block and then turned left at the next intersection and continued marching.

At about the middle of the block after they turned left and made their second turn I observed the leaders of the group being stopped by the Birmingham Police Department, and at that time a number of persons were placed under arrest.

During the time that the group or immediately or a short time after the group left the church Lt. Ralph Holmes and I were walking up the street about the middle of the street following with the group.

**Q.** Was that before their arrest?

**A.** Yes. And at this time Rev. Wyatt Tee Walker was walking along with us and he made a remark to me, "I did not know you took pictures," or words in substance the same.

After several persons had been arrested and the Police Department in an effort to scatter the crowd met with some resistance and from the point where the initial arrest was made and to the area where the crowd was moving into this park area there were other arrests made at that time.

A short time after these arrests the police was continuing moving the crowds on and I observed the Rev. Wyatt Tee [fol. 264] Walker standing about the middle of the block in the park waving his arms and I heard him speaking to the people who were passing along the sidewalk, "Make one circle around the block."

**Q.** Was that a part of the organized march or was that a part of the crowd?

**A.** Actually, that was part of the crowd. His direction at that time was to the crowd. As the people would pass him on the sidewalk he was waving his arm and stating to the

group, "Make one circle around the park." That was referring to circling the block around the park because the people were in the park at that time.

Instead of continuing the march around the park the police dispersed the people who had assembled there, the crowd, and they assembled on the steps of—I believe that would be the 16th Street Baptist Church—and held a song and a prayer service there.

Q. Now, did you have further conversation with him that day?

A. On that night a meeting was held at the 16th Street Baptist Church which Lt. Holmes and I attended along with two Birmingham police officers, two plain clothes officers.

Q. Let me interrupt you first to ask whether or not you had further conversation with Rev. Wyatt Tee Walker during the afternoon or during or immediately after this incident you refer to?

A. Not in that particular instance I did not. I did have conversation with him that following night.

Q. All right. You may go ahead.

A. Lt. Holmes and I attended the services or the meeting held at the 16th Street Baptist Church along with two plain clothes police officers from the Birmingham Police Department. We were in and out of the church. On one occasion Lt. Holmes and I stood near the back of the auditorium to the church. We left the church for a brief bit of time and returned to the church and then at that time we stood up near the speaker's stand to the right in the auditorium. While standing there someone opened the door and I recognized the Rev. Bernard Lee inside the office in the church and he spoke to me and I spoke to him and I immediately [fol. 265] thereafter went into the office and began conversation with Bernard Lee.

Q. Now, we have not identified Bernard Lee.

A. He is also a representative of the Southern Christian Leadership Conference.

While in conversation with Bernard there in the office of the church Rev. Walker came into the office.

**Q.** That is Wyatt Tee Walker?

**A.** That is Rev. Wyatt Tee Walker. After he came into the office we exchanged greeting as we had done on other occasions, having been acquainted for a period of time. We entered into a conversation.

As I remember, in reply to a question to him, "How are things going," or how is—what kind of progress do you consider making, or something like that—anyway, in reference to the Movement he produced or removed from his pocket three three by five white cards with writing on the cards in pen and ink, as I remember, blue ink, and discussed that these represented observations in five downtown retail stores of Negro people who were in there in connection with the boycott and stated that "We are conducting a successful or reasonable successful boycott at this time."

From discussing that we went into a general discussion of the situation in Birmingham and the discussion led from one thing to another there for a period of several minutes.

In reply to a direct question to Rev. Walker I asked him had he considered or had SCLC considered the danger in the Movement in the event that members of the Black Muslims should enter into the Movement and create some violence as these people have a reputation along that line.

**Mr. Shores:** Your Honor, we object to Black Muslims being brought into it again.

**The Court:** Sustain unless the conversation following had something to do with this injunction or against those acts that were enjoined against by this order.

**Mr. McBee:** Your Honor, I think it would lead to that. [fol. 266] We would ask Your Honor to hear the evidence and you can strike it out if you don't think it is relevant.

**The Court:** I will allow him to testify with that reservation.

**A.** During this conversation Rev. Walker stated that that is a calculated risk, that there had been consideration given to the possibility of the Muslims entering in on their

own and not in conjunction with the SCLC, and he considered that was a calculated risk at any time you planned a movement of this type, that that thing was to be considered. However, he stressed or stated that the Muslim group's philosophy was so different from theirs there would not be any collaboration between the two in this type movement.

From that conversation there was a conversation as to the organizational structure and leadership of the organization Southern Christian Leadership Conference. We had kind of a session there as to the abilities of the various persons in the leadership of SCLC. There was conversation with reference to who of the leaders played the particular role or certain roles in the planning of these events as was occurring in Birmingham at this time. During this conversation the Rev. Walker described Martin Luther King, Jr. as a philosopher and a thinker as compared to himself being a strategist and decision maker. There was some reference to Rev. Martin Luther King's actually being the brains of the organization.

And along the same lines in that same conversation he stated that when it came to making a major decision as to specific activity or specific phase of the Movement there was always a vote among the leadership and that he had lost his vote on that particular day. When asked on to what the matter was he lost his vote on he failed to state. In fact, he would not discuss on what matter he had been voted down but stated he had been voted down on some action that particular day.

During the conversation he expressed some anxiety as to why his name appeared as the first name on the injunction. It seemed he was somewhat disturbed over that.

In further discussing the organization SCLC there was [fol. 267] some discussion as to the strength of the organization SCLC in the State of Alabama.

Mr. Shores: Your Honor, we object to that as irrelevant, the strength of the organization. That has nothing to do with this contempt proceedings.

Mr. McBee: Still talking about the leadership, Your Honor, and what it is doing and what it can do and what its potentials are and what its aims are.

The Court: I think the general discussion is taking too much time with reference to the discussion that he had. If we could restrict it to those incidents involving the injunction—

Mr. McBee: I will ask you this question.

Q. Did the percentage of population—was that question discussed between you and he as to what percentage or what number were involved in this movement?

Mr. Shores: Your Honor, we object to that question.

Mr. McBee: That is a preliminary question, Your Honor.

The Court: Overrule.

Mr. McBee: I think we will show some very definite light on this whole thing in a moment.

The Court: I will overrule the objection.

Q. Go ahead.

A. On the discussion there was questions as to what percent of the Negro people in the State of Alabama was active in the Movement as affiliated with the Southern Christian Leadership Conference.

Q. What was the amount?

A. The percentage discussed was approximately two percent of the Negro population of the State of Alabama. In this discussion I made a statement which was a little bit of an estimate that there were approximately a million two hundred thousand Negroes within the State of Alabama and from the two percent basis the Rev. Walker calculated that SCLC would have a following of approximately twenty-five thousand based on the two percent [fol. 268] figure. And during the same discussion he made a direct statement that this figure of two percent of the population was sufficient to create a revolution. And immediately following that statement—

Q. Did he say anything else about the revolution?

A. Immediately following that I replied that, yes, no more than two percent of the population created a revolution in Russia and small percentages of people in other nations have created revolutions to overthrow the government.

Following that Rev. Walker elaborated if the Movement "did not obtain the things that we are seeking, then we will follow the course of revolution to obtain those things."

Q. In other words, if the Movement didn't accomplish its purposes—

A. If they did not accomplish their purposes—

Q. —that they would utilize the method of revolution as a manner of accomplishing them?

A. If they did not accomplish their purposes then "We would resort to revolution." In substance that was the conversation.

Q. That was on the evening of the 12th?

A. Of the 12th of April.

Q. Friday evening?

A. Yes.

Q. Now, you were in and out. Did you hear any of the discussion that Rev. Bevils made?

A. No, sir. My understanding is that Rev. Bevils was talking in the auditorium of the church during the same time the conversation was going on between Rev. Walker and myself and Lt. Holmes.

Q. All right. Now, you then are not too familiar with what went on inside the church?

A. During the time that I was in the church there was a song service and a prayer service. That is the time I was actually in the auditorium of the church, and I believe a collection was being taken up during that period of time also.

Q. You didn't hear any of the speeches though?

A. I did not hear any of the speeches, no.

[fol. 269] Q. Were you present on Easter Sunday, the 14th day of April?

A. Yes, sir, I was.

Q. Were you present also at the time of a march or procession or parade on that day?

A. I was, sir.

Q. Would you tell what you saw on that day and where you were when you saw it.

[fol. 270] A. At a church located I believe at the intersection of 7th Avenue and 11th Street. I was present there from approximately 2:30 or 3:00 o'clock in the afternoon on until about sundown. While observing from the outside this church, at the time I arrived there there was a small gathering of people standing around on the sidewalk and areas adjacent to the sidewalks and on the church grounds. The crowd continued gathering for a period of I would estimate an hour and a half. During the meantime a service began within the church. On one occasion I was in the church and all the seats were filled. There was no one standing in the church at that time. Crowds continued to gather outside the church, to my estimation eight hundred or a thousand people in the church and outside the church. On one occasion during this afternoon I observed Rev. Walker walking to a group of people standing on the sidewalk diagonally across from the church—diagonally across the intersection from the church—as if he was giving directions to these people. It was apparent for a brief period of time that he must have been organizing some—

Mr. Shores: I object to what appeared.

The Court: Sustain.

Q. Just tell us what you saw, Mr. Painter.

A. I observed Rev. Walker talking to a group of people as if he was lining them up.

Mr. Shores: I object to "as if."

Q. You can say what he did.

A. I saw him talking to a group of people and forming a group of people two or three abreast.

Q. In other words, when he spoke to them they formed into a group?

A. Yes. Immediately thereafter he started walking back across the street and I entered into a conversation with him. I asked him a direct question in the form of a statement and question if he ever received information that a march was planned on the City Hall and as a matter of fact the City Jail or either one. He refused to answer my [fol. 271] question as to whether or not the march was planned on that particular day. I stated to him that our interest was in the interest of controlling the crowds and law enforcement. He replied to me: "If you control yourself and the police as well as I can control this crowd, there won't be any problem. I guarantee you I can control these people."

He did state during the conversation that the group would leave the church there and go to the church, the Pilgrim Church by automobile, and he stated: "You have someone at the City Hall."

That was about the substance of the conversation at that particular instance.

Q. All right, sir.

A. Sometime thereafter a group came out of the church through the side door and immediately came out on the sidewalk and turned right and continued walking, or began walking at a rapid rate of speed along the sidewalk. Almost simultaneously as if within the same movement, or I will say simultaneously, this large crowd of people that had gathered outside the church began moving along with them.

Q. The ones that came out of the church and the ones on the street?

A. Yes, immediately they fell in with them and all began to move in a direction away from the church. I observed that group go along the street, the sidewalk, including—covering basically all of the area of the street and sidewalk moving away from the church. In fact, I was going along with them as they were moving.

Two blocks away from the church the police had set up a blockade to stop the group. A short distance away from the intersection where the blockade was set up the leaders turned through an alley or residential section as if to evade the blockade. I had gone on at the time the group turned. Actually I was in front of them at that time. I was at a distance of about a half a block up one street the group was going parallel to me across the alleyway. When I returned back to the corner where the police had set up the blockade I again saw Rev. Walker. He made the remark [fol. 272] to me at that time: "Why are you puffing and blowing so much? You better be careful or you will have a heart attack."

During that conversation walking along with him I, in a manner of caution, said to him: "If you are not careful you are going to get someone hurt."

He stated to me: "If anyone is hurt, they will be injured or hurt by your people, the police, and not by our people."

From that we walked a short distance together and the police at this time had contained this group within a block area, as I recall, I am almost certain, it must have been Six Avenue. There were several hundred people within this group. I observed on another occasion the Rev. Wyatt Tee Walker there in the group standing along the sidewalk or near the curb. While there on this occasion several arrests were made, and on another occasion I was standing with him about ten feet from one of the City motors and an object struck the windshield of the motor and broke the windshield.

I had been taking photographs throughout this whole afternoon, as I had on previous occasions, and I immediately turned to my left and saw a Negro man throw a brick that would consist of about three-quarters of a full brick. The brick passed within a close range of one of the police officers there in the street on duty.

Q. Where was Rev. Walker?

A. He was standing almost directly across the street from that incident.

Q. He was right there?

A. Yes, sir. The Negro male who threw the brick was taken into custody by the police. In fact, two or three police officers had hold of him and he broke away from him and ran across the street and almost fell in front of a car and did fall into the side of an automobile, at which time he was taken into custody.

Some several minutes following this the police began removing or pulling back out of the area, and the Negroes in this group, the rather large group of people, began walking from that area back toward the church where the original meeting on that afternoon had been held.

[fol. 273] Then near sundown or a little after I observed Rev. Walker standing outside in front of the church beckoning the people to come inside. I left the area on that day at about sundown.

Q. Now, did you know the leaders? I believe you have testified as to the Good Friday parade or procession. As to the officers, I mean the leaders, the preachers that were in that parade leading that parade. Did you see who was leading the parade on Easter Sunday?

A. On Eastern Sunday I knew the Rev. A. D. King to be among the leaders in the group. Others in the group I did not know.

Q: A. D. King was there?

A. Yes, sir.

Q. He was among the leaders?

A. Yes, sir, at the time they came outside of the church. There were others in that group that I did not know.

Q. A. D. King was involved in this Good Friday march?

A. I am not certain that he was or was not.

Q. You have no recollection of him being there?

A. I observed in the Good Friday march Bernard Lee walking with the membership as they left the church. Apparently—

Q. I didn't ask for Bernard Lee. I asked for A. D. King.

A. I am not positive I observed him on that day.

Q. You did identify Shuttlesworth?

A. Yes, he was in the group on Friday, not on Sunday.

Q. I believe you stated that M. L. King—

The Court: I think you have covered that already.

Mr. McBee: I just want to be sure if he has. I won't press the point. All right, I believe that will be all.

The Court: We will take about ten minutes recess, gentlemen.

(Whereupon, at the hour of 3:17 P.M., April 22, 1963, the proceedings were in recess until 3:30 P.M. when the proceedings continued as follows:)

Cross examination.

By Mr. Shores:

Q. Mr. Painter, how long have you been engaged in law [fol. 274] enforcement?

A. I began with the Department of Public Safety as a Highway Patrolman in August, 1948. I have been continuously in the service of the Department of Public Safety since that time.

Q. Had you been engaged in other type work prior to the time you went with the Highway Department?

A. That is the Department of Public Safety rather than the Highway Department, as a matter of record.

Q. What have your duties consisted of during your tenure of being engaged in law enforcement?

A. During the approximate first four years I was assigned as a Highway Patrol officer investigating primarily traffic laws on the highways in the State of Alabama. Since that time I have been assigned as a crime investigative officer investigating the various crimes as covered within the criminal code of the State of Alabama. And for a period of time I have been assigned to investigating racial problems as it presents a problem for law enforcement.

Q. And how long have you been assigned in the Department to investigate racial problems?

A. That must have been a period of approximately three years or a little longer. I would like to qualify that by saying that I have other duties along with that assignment.

Q. I believe you said you are acquainted with the Southern Christian Leadership Council?

A. Southern Christian Leadership Conference?

Q. Yes.

A. I have a degree of knowledge from studying some of the background.

Q. And also you are acquainted with the Alabama Christian Movement for Human Rights?

A. Yes, I have some knowledge of that. I don't have total knowledge of either one, but I have some degree of knowledge of both organizations.

Q. How long have you had this knowledge of these two organizations?

A. The knowledge has been accumulated over a period of two or three years.

[fol. 275] Q. Would you classify them as Negro protest organizations?

Mr. McBee: I object to what he classifies them as.

The Court: Overrule the objection.

A. I would classify them basically as Negro organizations; protest organizations if you wish to describe them as that.

Q. In your study of these organizations what have you learned to be the purpose of these organizations?

[fol. 276] A. Two years ago or two and one-half years ago the philosophy, the trend of thinking, the teachings, the program was primarily and basically civil rights. The trend within the last year to eighteen months is more total integration. There is more emphasis placed on total integration than on just civil rights.

Q. In your investigation of these organizations, would you say that you found that their methods were what you consider to be nonviolent?

A. The teachings have been nonviolent. The psychology, the methods used, have been to incite others to create violence upon the participants in demonstrations.

Q. In your experience with these organizations, do you know of any instances where any member of the organizations or any officer of the organization has preached violence?

A. Indirectly, yes.

Q. Where and when?

A. There has been a complete program within the last year or eighteen months of teaching hatred of the white people; that you can't trust the white people, that they are your enemies. They were teaching nonviolence on the one end, but on the other hand they were saying that the Negroes in Birmingham, Alabama are buying firearms to protect themselves. They were supposedly teaching nonviolence but yet psychologically they were advocating violence.

Q. You say psychologically; you said Negroes were buying firearms?

A. I have heard statements made to that effect by speakers in Negro churches, in Montgomery.

Q. We are talking about—have you heard that from members of either of these groups?

A. Yes, sir.

Q. Which ones have you heard?

A. Dr. Martin Luther King stated in Montgomery, Alabama at a church service that Negroes in Birmingham, Alabama were buying firearms to protect themselves.

Q. Was that in the context of threats and bombings and burnings?

[fol. 277] A. That was during a speech he was making in Montgomery.

Q. Did that have reference to the City of Birmingham, that Negroes were suffering abuses, suffering from burnings and bombings and threats?

A. He can express what he was referring to better than I.

Q. Did you see any member of either of these organizations?

A. He stated that Negroes in Birmingham, Alabama—

Q. My question was whether or not any member, as far as you know, of either of these organizations had advocated violence. Do you know of any? Can you point out any specific instance?

A. The general theme is nonviolence in every program.

Q. Did you refer to an instance in which you indicated that the Black Muslims were—in your conversation with the Rev. Walker, did you indicate that their program was just the opposite to the program of nonviolence?

A. During the conversation with Rev. Walker I asked him the question did you consider the danger of violence should the Black Muslims become active in this movement in progress here in Birmingham at that time. His reply was: "Yes, that is a calculated risk."

Having some knowledge of the Black Muslim organization, knowing that that is what you might describe as a violent organization that advocates violence as against nonviolence by the Southern Christian Leadership Conference. My thinking at that time was what it would mean to his organization should the Black Muslims become active in Birmingham and his organization get credit or partial credit for various things that that organization was responsible for.

Q. I believe you testified that increasingly of late that the object and purposes of the Southern Christian Leadership and the Alabama Christian Movement for Human Rights was increasingly moving toward integration?

A. The program as presented to me and as I have heard from the pulpits in numbers of Churches is certainly moving in the direction of total integration. There is more emphasis placed on integration than on just civil rights.

[fol. 278] Q. You stated you are acquainted with the program of the Black Muslims. Is that program one of integration or complete segregation?

A. The program of the Black Muslims is black supremacy and segregation of the races. Going further than that, the complete annihilation of the white men, if possible.

Q. Then in that sense you would certainly say that the two organizations are not similar?

A. No, in that sense I think there is no comparison between the two.

Q. Getting back to the statement about—your conversation with Rev. Walker about the necessity of a revolution, did he specify whether it was a social revolution or a political revolution or—

A. The theme of our discussion at that time was a revolution. We discussed the fact that a small percentage of the population of Russia overthrew the national government there, and that small groups of population in other countries overthrew the government of those countries.

Q. I think you say your knowledge of the organizations, the Alabama Christian Movement for Human Rights and the Southern Christian Leadership Conference, that its program is one of nonviolence?

A. The theme has been one of nonviolence.

Q. Let's get to the meetings, the first one on Good Friday. Where did you say this meeting was held that you were stationed outside of?

A. I am not entirely familiar with the names of the Churches. I believe it was the St. John's Church. I don't know the denomination.

Q. When you were present at the meeting were there other officers present in the vicinity of this Church?

A. There were a number of uniformed officers present.

Q. Do you have a judgment as to the number?

A. I would hesitate to estimate the number because they were going in and out of the area on motorcycles and automobiles, and to say how many were there on any specific occasion would be rather hard to estimate.

Q. You were there observing, were you not?

A. I was there observing.

[fol. 279] Q. And how long were you there?

A. In the area in the immediate area of the Church—this is an estimation—from 16 to 30 minutes.

Q. That was the whole time you spent in the area of the Church?

A. No, in an area above the Church from noon until approximately that time, and in the area of the Church itself after the march began.

Q. Were there as many as a hundred policemen there?

A. It would be extremely hard for me to estimate.

Q. Do you think it was at least fifty?

A. I would hesitate to estimate how many were there. There was so much going back and forth on vehicles and so forth.

Q. Were any situated at the church or around the church or within a block of the church at the intersection?

[fol. 280] A. There were officers on the sidewalk immediately back of where I was standing. On one occasion I observed either two or three officers asking people who had assembled on the sidewalk blocking the sidewalk to clear the sidewalk.

Q. Did the people clear the sidewalk?

A. Generally speaking, yes.

Q. At anytime did a larger gathering meet while you were standing there at the church, before the church, or at the church?

A. In the immediate vicinity of the church on the side of the street the church is located, and across the street from where the church is located, and within that block and adjacent area, I would say seven hundred to one thousand people.

Q. Were there officers congregated at that place?

A. I have stated there were officers there in and out of the area.

Q. Did they do anything to disperse the crowd?

A. I observed nothing other than keeping the sidewalks and streets clear at that particular time.

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Q. And they continued to allow the people to congregate until it finally became several hundred, you say?

A. The people were gathered there in a total, my estimation, seven hundred to one thousand people.

Q. Did the police ever try to clear those people in that area?

A. I have stated they kept the sidewalks and streets clear.

Q. Now, was this the occasion that you saw the Rev. Wyatt Walker come out, and you say gather several persons together in three's?

A. No, that was on Sunday after that. This is on Friday I am speaking of at the church.

Q. On this day did you see the procession or parade start from the church?

A. Yes, I did.

Q. And how many would you say were in this parade or procession?

A. It was extremely hard to distinguish what consisted of the parade, or what the parade consisted of, as the [fol. 281] people who were already gathered outside, when the people came out of the church, then the whole bunch, all the people on both sides of the street began immediately moving on the leaders.

Q. What did the people on the inside of the church do when they came out and started moving?

A. They came out, and I observed Rev. King, and Abernathy, and Shuttlesworth, and the leaders, and then they formed a line on the street and began marching, or walking.

Q. Will you describe this line, just how the line was formed?

A. It would be extremely hard to, and there again to establish exactly who was in a planned march, (if there was such a thing, because so many people began going along together.

Q. There was no formal lineup by two's, or three's?

A. Apparently there was a line of two's or three's at the beginning, but in a short time people began inter-

mingling, and it was hard to distinguish one from the other.

Q. And this was on the sidewalk?

A. It was on the sidewalk.

Q. And, how far were these people allowed to march before they were blocked?

A. A distance of several blocks. I am not too familiar with the location of the church as compared to where they were stopped. It would be—I would hesitate to estimate the number of blocks. I am not too familiar with the area.

Q. Will you describe the situation as they did go these two or three blocks, or several blocks?

A. The street was basically kept open. There was a large group of people following the sidewalks, and the area adjacent to the sidewalks along with the marchers. There was some singing, there was hollering, or expression of thought, a degree of excitement, and as the procession went along, this intensified.

Q. But, you said the streets were kept open?

A. To a degree the streets were kept open. There were some people in the streets, there were some people along [fol. 282] the sidewalks. I observed people of both races in the street, actually.

Q. You saw people of both races?

A. Yes, sir.

Q. About how many—out of this several hundred, how many would you say were white people?

A. The white people consisted of—basically of the police officers and the press. If there were other white people, I have no knowledge of it.

Q. Now, was it all—did you attend a meeting in the church on Good Friday at any time?

A. On the night of Good Friday, the 12th.

Q. On the night of Good Friday, and I believe you say you were with three other officers?

Q. And they continued to allow the people to congregate until it finally became several hundred, you say?

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Q. On the night of Good Friday, and I believe you say you were with three other officers?

A. With Lt. Ralph Holmes of the Department of Public Safety, and two plain clothes officers of the Birmingham Police Department, whose names I do not recollect.

Q. And I believe you said you stood near the speaker stand?

A. On one brief occasion, yes. That would be along the wall adjoining the speaker's stand.

Q. Did you identify yourself as a police officer?

A. There was no occasion to identify myself as a police officer.

Q. Did Rev. Walker, and those whom you knew know you as a police officer?

A. Yes.

Mr. Breckenridge: We object to what Rev. Walker knew.

Mr. Shores: He said he knew it. He has answered it.

Q. I believe you testified as to the names of persons whom you knew that was in attendance at this meeting. Again, will you repeat the names of the persons whom you knew attending this particular meeting?

The Court: This is the night meeting?

Q. The night meeting on Good Friday.

A. I don't recall testifying as to the names of persons who were in attendance there that I knew.

[fol. 283] Q. Did you know anyone present at this meeting?

A. Yes, I did.

Q. Will you give the names of the persons?

A. I knew Bernard Lee, I knew Wyatt Tee Walker, I knew A. D. King, I knew Dorothy Cotton, I knew C. Herbert Oliver. I have never met him, I just knew him on the side. The others I knew on the side, or had become acquainted with them. I knew a person by the name of Shortridge on the side, and if there were others present in the church on that night while I was in the auditorium that I knew, I don't recall.

Q. Now, on Easter Sunday, you were in the vicinity of the church from which this parade, or procession, or demonstration started?

A. That is correct.

Q. And when did you first go into this area?

A. Sometime between, in my estimation, 2:30 and 3 o'clock.

Q. And I believe you said you remained in the area until about sundown?

A. Until about sundown, yes.

Q. On this date, were there officers stationed in the immediate vicinity of the church?

A. Yes, in the immediate vicinity, and officers and vehicles moved and around the area, I would say continuously, or almost continuously.

Q. And were there any stationary?

A. Yes, there were. I, there again, would elaborate how many, because it is extremely hard to tell how the officers are moving, who is moving, and who is stationary, unless you are acquainted with the officers.

Q. Were there a good many motor vehicles occupied by officers, and three-wheelers, and singles?

A. There were single wheeled motorcycles, three-wheeled motor cycles, and automobiles occupied by officers in the area and moving through the area.

[fol. 284] Q. The estimation of the police inspector of about fifty, would that be in your judgment about the number?

Mr. McBee: We object to that, may it please the Court. I don't think the police inspector estimated anybody. He said he didn't know.

Mr. Breckenridge: I believe he said he would have to get those records.

Mr. Shores: He said he would have to get the records about the exact number. We asked the exact number, but he estimated there were some fifty or more.

Q. In your best judgment, would it be as many as fifty?

A. There again, in the manner in which the officers were moving, coming into and going out of the area, it would be extremely hard to estimate the number.

Q. On this day, were there a large number congregated outside the church?

A. You mean large number of people?

Q. Yes.

A. Yes, a rather large number.

Q. Was the number as large as it was on Good Friday?

A. As large, or larger.

Q. And did the law enforcement officers do anything to dispel the crowds, disperse the crowd at that time?

A. I observed nothing.

Q. In other words, the officers permitted them to congregate in the immediate vicinity?

A. Apparently so.

Q. Did you notice any formal line, or parade, or procession, or demonstration coming from the church on Easter Sunday?

A. A group of people left, as I have described, the door at the side of the church there near the back, came out of the church at a rapid walking, or almost running, came out at a rather rapid walk, immediately turned on to the sidewalk and headed away from the church at what appeared to be a spontaneous action. Everybody went with the—

[fol. 285] Q. Were the people who came out of the church in any formal order? Did they come out in two's or three's, columns of two's or three's, or four's?

A. There appeared to be columns of two's or three's.

Q. Would you state the number that came out in such formation?

A. It would be hard to estimate the number, because the crowd intermingled with them.

Q. Were you present at the time any of these demonstrators were arrested, either on Good Friday, or Sunday?

A. I was present when I would say a majority of the arrests were made on Friday, and I was present when either two or three arrests were made on Sunday.

Q. Were you able to count the number that were arrested?

A. I made no effort to count them.

Q. In your best judgment, were you able to estimate the number arrested on either of those days, or both?

A. I would not estimate it, because I don't know.

Q. During the time they marched in that formal march, was it on the sidewalk?

A. On Friday, yes. On Sunday, I would say the march began on the sidewalk. Where it finally ended up, I don't know, because the crowd so suddenly gathered around them.

Q. This was the crowd the officers had allowed to congregate in the immediate vicinity of the church?

A. The crowd that had gathered outside the church, and those inside the church all went as a body.

Q. Following the individuals who were in the formal columns marching?

A. They formed almost a column, including the whole street and both sides of the sidewalk and the adjacent areas in between.

Q. As a matter of fact, they were on the opposite side of the street also, were they not, a large crowd following along with the demonstrators?

A. On Sunday the crowd went together, on Friday there [fol. 286] was a division of the crowd by the street. On Sunday, there was no division of the crowd. They just simply filled the whole street and the sidewalk area.

Q. Would you estimate the number of news men and officers who marched along the column?

A. I would not. I have no way of knowing.

Mr. Shores: That is all.

Mr. McBee: I think that is all.

(Witness excused)

The Court: Do you have a short witness we might use before the end of the day?

Mr. McBee: I think so.

[fol. 287] Mr. JAMES WARE, called as a witness, being duly sworn, was examined and testified as follows:

Direct examination.

By Mr. McBee:

Q. Would you state your name, please?

A. Ware, Jim Ware.

Q. And what is your occupation?

A. I am a photographer with the Birmingham Post Herald.

Q. Were you present on Easter Sunday at the time of a march, or a procession, or parade which originated in the vicinity of 11th Street, I believe, and 6th Avenue?

A. Yes, sir.

Q. What was your purpose in being there, Mr. Ware?

A. I was working for United Press.

Q. That is, you were there on official business?

A. Yes, sir, taking pictures, yes, sir.

Q. Now, are you the United Press representative of this area?

A. We are affiliated, sir. We are affiliated, and I work with them on occasions.

Q. That is to say you are also employed by the Birmingham Post Herald?

A. I am employed by the Post Herald, yes, sir.

Q. But, you do have an affiliation with the United Press?

A. Yes, sir.

Q. All right, sir. Now, on the occasion that we have mentioned a moment ago, would you state what you saw happen there?

A. Would you make that a little plainer, sir?

Q. What I have reference is did you see any people around anywhere in the vicinity of where this march was taking place?

A. Yes, sir, there were a lot of people, colored folks on both sides of the street there.

Q. All right, a lot of colored folks, or Negroes on both sides of the street?

A. Yes, sir.

[fol. 288] Q. Was there a large number of them, or small number of them?

A. There was a large number, sir.

Q. How many would you estimate was there?

A. Roughly, I would say a couple of thousand.

Q. What were they doing, if anything?

A. They were—the—at this particular time I have got in mind, I mean I was in the street, and I was taking pictures of an arrest being made.

Q. All right.

A. And then—I was standing directly behind a three-wheeler there, and a rock hit this three-wheeler.

Q. All right.

A. And I started to move out, and must have made four or five steps, and a rock hit me in the back of the head. Rather, I think it was torn up pavement, or something like that. I referred to it as a rock.

Q. In other words, it was concrete, cement, or something of that type?

A. Yes, sir.

Q. That is when you were moving away from where the—

A. Yes, sir.

Q. —rocks were being thrown?

A. Yes, sir.

Q. Did it injure you in any way?

A. Hit me right on the back of the head, yes, sir, kind of attled me for awhile, and it didn't knock me down. It must have hit a glancing blow. It was a chunk about that big (indicating).

Q. You pulled out your hand and demonstrated about how big would you say that is?

A. About the size of a large grapefruit, or something like that.

Q. Did you have any signs of the blow after you recovered your composure?

A. Yes, I had a knot on the back of my head. It is still sore.

Q. You say you had a knot on the back of your head?

[fol. 289] A. Yes, sir.

Q. And it is still sore, even today?

A. Yes, sir.

Q. Now, what sort of crowd was that about that time? What was going on? Did you hear or see anything?

A. Yes, sir, a lot of people were—from the crowd were hollering, apparently at the policemen making the arrests.

Q. All right.

A. And actually I didn't see, but the two rocks, or pieces of pavement, or whatever it was, but I heard several more of them falling around me when I was moving.

Q. In other words, there were other rocks falling in the area?

A. Yes, sir.

Q. All right, did you see them do anything else besides hollering or hear anything else besides hollering?

A. Well, no, sir, I was concentrating on the—taking pictures of this—of what was happening, and I wasn't paying too much attention to that part, to the crowd. I could hear them hollering, and everything, but I wasn't looking at the crowd, or anything.

Q. Were they cheering the police officers?

A. No, sir, they were hollering at them.

Q. Did their voices sound like they were pleasant, or angry, or what?

A. No, sir, they sounded like they were mad at them.

Q. Did the crowd appear to be unruly?

A. Yes, sir, I would say so.

Q. Now, did you see the rock hit the three-wheeler?

A. Yes, sir.

Q. Did it do any damage to it?

A. It knocked particles away from it. I expect it was from the—I was standing there when it hit, and I saw stuff flying from the three-wheeler.

Q. You don't know whether it was glass, or not, or what it was?

[fol. 290] A. I don't know what it was.

Q. How many took part in the parade? Do you know?

A. There were—the parade, itself, the people that were moving—

Mr. Shores: We object to the word "parade."

Q. Well, parade, or procession, or whatever you choose to call it, how many took part in it?

A. Well, it would be hard—I would just make an estimate that it must have been fifty people. I don't know.

Q. Did you see it when they started off from the church?

A. Yes, sir.

Q. What did the crowd do, or the other people that were there, if anything?

A. It seemed to—as I say, I am a little bit confused, because I am watching what is going on, I am taking pictures, but the crowd seemed to move on each side of the street, and move around with the procession, the parade.

Q. In other words, they moved up?

A. Yes, sir.

Q. Did you identify—did you know any of the individuals who were there and participated, and were arrested?

A. We identified them—I mean, I didn't at that particular time, I didn't, but we identified the pictures I took.

Q. Did you identify who was in it?

A. King, and Walker, I believe it was. I am not positive.

Q. You saw Wyatt Tee Walker in the picture?

A. Yes, sir.

Q. And which King, A. D. or Martin Luther?

A. A. D.

Q. A. D. King. Was Wyatt Tee Walker there when the rocks were being thrown?

A. I don't know at that particular moment.

Q. You don't know where you were when you shot his picture?

A. Yes, sir, I saw the—the last picture I shot of him, I believe they were putting him in a police car or patrol wagon, one. I am not sure which it was.

[fol. 291] Mr. McBee: I see. You may take him.

Cross examination.

By Mr. Shores:

Q. Mr. Ware, I believe you say you were detailed to take pictures by the Post Herald, and on that day you were also working for United Press?

A. I was working exclusively for United Press.

Q. Exclusively for United Press that day?

A. Yes.

Q. And you were taking pictures of the incidents that were taking place?

A. That's right.

Q. And you focused your camera on the people as they began to march when they came out of the church?

A. I took their pictures.

Q. You took their pictures, and you said you estimated there were about fifty in the group that took part in this march?

A. That followed on down the street after it began to move. That is my estimation.

Q. About fifty?

A. That is what I estimate.

Q. Did you see them when they came out of the church?

A. Yes.

Q. How many came out of the church?

A. I really don't know. I know I think I saw three people that were leading the march, or whatever it was, and I was concentrating on them.

Q. On the three?

A. That's right.

Q. Did you ever focus on the number that were behind them?

A. I did a picture after the procession moved a block or a block and a half down the street. I got in there and had a picture of the people behind there, and of the whole thing, and it looked like about fifty people.

[fol. 292] Q. Looked like just about fifty people?

A. I would say that.

Q. And that was on Easter Sunday?

A. Yes, that was on Easter Sunday.

Q. And you said about where this church was located—did you give the location of this church from which this march proceeded?

A. About 7th Avenue and 10th Street.

Q. About 11th Street and 7th Avenue?

A. About that, yes.

Q. Now, at what time did you arrive at that scene at the church?

A. I don't remember the time that I got down there. I don't remember the time.

Q. Was it in the early part of the afternoon, or late?

A. Fairly early part of the afternoon.

Q. Would you say around about 1:00 or 2:00 o'clock?

A. I should think so, somewhere around there. It was quite awhile before the march, or whatever you call it, started.

Q. And how long were you there then, would you estimate, before the march took place?

A. An hour and a half or two hours.

Q. An hour and a half or two hours. Now, during that time were there police officers stationed around there near this church at various corners?

A. I saw police officers there, yes.

Q. Did you see many, or few?

A. Well, it depends on what we would call many. I did see maybe ten or twelve.

Q. Ten or twelve?

A. Uh huh.

Q. These were in vehicles, or—

A. No. Well, some were on these motorcycles, and some were just policemen there.

Q. I see. Now, I believe you said you took a picture of [fol. 293] the marchers, and the last picture you made was when they were putting them in the patrol car and taking them off to jail?

A. I don't know whether they took them off to jail, or not. I think that is the last picture I took of King.

Q. You say you took a picture of Rev. Walker also being put in the patrol?

A. I am not positive. I had one picture of King and Walker together, but that was before going into the vehicle.

Q. Now, at the time the rock was thrown, did you see Rev. Walker at that time?

A. No.

Q. Did you recognize anybody else in that group except Rev. Walker and Rev. King?

A. Did I recognize anybody?

Q. Yes.

A. You mean—

Q. To know, just like you knew Rev. Walker and Rev. King.

A. No, not except the newspaper people, and stuff like that is the only people I knew.

Mr. Shores: No further questions.

Redirect examination.

By Mr. McBee:

Q. One more question: how did you happen to know to come down there?

A. Sir?

Q. How did you happen to know to be there?

A. United Press International called me.

Q. Oh, United Press called you?

A. Yes, sir.

Q. Now, where is their headquarters?

A. In the Birmingham News building.

Q. I have one question I bet I overlooked. Are you familiar with this news release, United Press International news release?

A. I don't know whether I read it, or not, sir. I believe I read this. My job is taking pictures. I don't pay too much [fol. 294] attention to the word part of it. Do you want me to read it?

Q. If you will, read it, and see if you are familiar with it.

A. I don't believe I read this release before now.

Q. You don't think so?

A. No, sir.

Mr. McBee: All right, that is all.

Mr. Shores: No further questions.

(Witness excused.)

Mr. McBee: Your Honor, do you wish us to go ahead?

The Court: Do you have another witness you might get through with?

Mr. McBee: Your Honor, I think the witnesses we will put on will be long.

The Court: We will recess at this time. I would like to say for the benefit of both parties here that Judge Clarence Allgood has a motion set before him in regards to some case in connection with this matter.

Mr. Breckenridge: At 9:00 o'clock in the morning.

Mr. Shores: However, Your Honor, he said if we were engaged here he would continue it over until Wednesday.

The Court: I have conferred with him, and told him I would release the attorneys involved here for the purpose of handling his motion in the morning, and I would expect you back over here within fifteen minutes after you are released by him.

Mr. Breckenridge: Fine, Your Honor. That suits us fine.

Mr. Shores: If they have somebody to take care of it down there, and part of us can be here, and part of us down there—

Mr. Breckenridge: Your Honor, I am personally handling the motion, and I would like to be present.

Mr. Shores: What I mean, if Mr. McBee could be here, then he could go handle the motion, and we could continue on, so far as we are concerned.

Mr. Greenberg: We don't need to be there.

Mr. Breckenridge: What ever Your Honor wants to do. [fol. 295] It might be satisfactory for me to go over there, and Mr. McBee to come here. We don't want to delay either case. I think Mr. McBee can come here, and I will go over there.

The Court: Then, we will continue in the morning at 9:30.

(Whereupon the Court was in recess from 4:15 P.M., April 22, 1963, until 9:30 A.M., April 23, 1963, at which time proceedings were resumed as follows:)

[fol. 296] The Court: Who will the City have as their next witness?

Mr. McBee: Mr. Stanton, please.

MR. ELVIN STANTON, called as a witness, being duly sworn, was examined and testified as follows:

Direct examination.

By Mr. McBee:

Q. What is your name, please?

The Court: Before we begin I would like to say for the sake of the record that the respondents have subpoenaed a large number of people instanter, and that the Court received a copy of the instanter subpoena, which was served on him personally, and that other lawyers and officials who have been subpoenaed have indicated that they will be available upon call on reasonable notice.

Mr. Shores: All right.

Q. Would you give us your name, please?

A. Elvin Stanton.

Q. What is your occupation?

A. News director, WSGN radio.

Q. Are you affiliated with the UPI?

A. We carry UPI wire service, yes sir.

Q. Were you present at a meeting which was held on the evening of the 11th of April at a church at which were present, among others, Martin Luther King and Ralph Abernathy and Wyatt Tee Walker?

A. That was on Thursday, I believe, was it not?

Q. Yes, the 11th is Thursday, that is correct.

A. Yes, sir.

Q. Did you on that occasion—and may I ask you to look at this and see whether or not you can identify that as a news release that went out over the UPI?

A. Yes, sir.

Q. I will ask you if on that occasion the Rev. Martin Luther King, one of the respondents in this case, made the statement, quote—and I will ask you to refer to the release—"Injunction or no injunction we are going to march tomorrow."

[fol. 297] Mr. Greenberg: Objection, Your Honor. He has not indicated he has no recollection of this or that he has any need to refresh his recollection.

The Court: I think the exhibit, if properly identified, would be the best evidence.

Mr. Shores: May we see this exhibit?

Mr. Greenberg: We don't know if it has been properly authenticated, whose name is on it, where it came from, anything about it.

The Court: I assume that is the purpose of this witness.

Mr. McBee: The witness has just been asked one question about it.

Mr. Greenberg: Could we have this identified or authenticated to some way? I don't know what it is. It is just a tear sheet with no identification on it.

Mr. McBee: All right, it is a wire service release. You are exactly right, sir.

The Court: Let the exhibit be marked.

Mr. McBee: All right, Your Honor, we will ask the Reporter to mark it City's Exhibit 1 for identification.

(Whereupon, the above referred to document was marked, Complainant's Exhibit 1 for Identification by the Court Reporter.)

Q. What is this document that I have just handed you which has been marked City's Exhibit 1?

A. It is a radio press release that was filed on UPI wire at 6:44 April 12. That is 6:44 A.M.

Mr. Shores: Your Honor, may I examine him on voir dire?

The Court: I don't see any necessity yet. He is not prepared to offer it at this time. Your motion is refused.

Q. The question that I ask you is whether or not you recall the Rev. Martin Luther King on this evening of April 11th at a church meeting at which he was present along with other defendants whom I have named.

Mr. Shores: Your Honor, we object. That is a leading question. He is leading the witness.

[fol. 298] Mr. McBee: Well, it is all right. I will go at it the other way, if you prefer.

Q. Did you attend the meeting on the night of April 11th?

A. Yes, sir.

Q. Where did you attend the meeting?

A. It was at one of two Baptist churches, and I don't know which one it was at this time because I had attended some twenty meetings at four or five Negro churches, and I believe it was at St. Pauls Church.

Mr. Shores: Object to what he believes.

Q. That is just your best recollection?

A. Yes.

Q. All right, sir, who was present on that occasion?

A. There was a large crowd, four or five hundred persons, I suppose.

Q. All right, did you identify any of them that you had seen before or knew?

A. Yes, sir, there were some that I knew.

Q. Which ones did you know?

A. Well, I knew the Rev. King.

Q. That is Martin Luther?

A. Yes. The Rev. Abernathy.

Q. All right.

A. Rev. Walker.

Q. All right.

A. And I believe it was at this meeting that Rev. King's father was there. That is M. L. King, Sr. And a number of persons that I recognized their face. I would not recall their name. Rev. Young.

Q. Rev. Young you remember?

A. Yes, sir.

Q. Andrew Young?

A. Yes, sir.

Q. One of the defendants in this case?

A. I believe he is a defendant.

Q. Do you remember whether or not Rev. Gardner was there?

A. No, sir, I don't know Rev. Gardner well enough to know.

[fol. 299] Q. Do you remember other members of the press being there?

A. The only one that I remember is Skip Johnson was there; AP.

Q. The AP, Associated Press?

A. Yes, of Mobile.

Q. That is Walter Johnson?

A. I know him by Skip. I don't know his first name. I believe that is the same fellow.

Q. What sort of person is he?

A. Young, slight built.

Mr. Shores: I object. That is irrelevant. What difference does it make?

Mr. McBee: You wanted me to identify what meeting he attended, and I am trying to do it if I can.

The Court: The record wouldn't indicate his size or shape.

The Witness: His last name is Johnson and he is employed by the Associated Press of Mobile and that is the only Johnson they have out of Mobile.

Q. On that occasion I will ask you whether or not Rev. Martin Luther King made any statement pertaining to the injunction, and if so, what he said?

A. Yes, sir, he did refer to the injunction, and a quote was used by the wire service, which I called into them.

Q. In other words, you called the wire service yourself?

A. Yes, sir, I covered the meeting for the wire service.

Q. All right, sir.

A. I think he said, "Injunction or no injunction we are going to march tomorrow."

Mr. Shores: I object to what he thinks.

Q. You can testify not what you think but—well, I think you can testify to that legally, but at any rate most lawyers

insist that you testify to the best of your recollection. Is that the best of your recollection?

A. The exact wording is what I am not sure of.

Q. All right, do you have written notes of your own you could refer to?

[fol. 300] A. Yes, sir, I have notes of that meeting.

Q. Do you have them with you?

A. Yes sir.

Q. Would you like to refer to them?

(Witness looks at notes taken from his pocket.)

Q. Using your notes, did you make those notes at the time this meeting was going on?

A. Yes, sir.

Q. Would you by referring to your notes please state what Rev. Martin Luther King said about the injunction?

The Court: Just a minute, I notice that Rev. Martin Luther King is not in court.

An Unidentified Speaker on the First Row: He has some kind of food poisoning. That is the reason for his absence this morning.

The Court: I see.

Q. You may proceed.

A. The Rev. King said, "Injunction or no injunction we are going to march tomorrow." That is a direct quote.

Q. That is a direct quote?

A. Yes sir.

Q. Did he make any other remarks relating to the injunction?

A. That is the only one, I believe. That is the only one I recall that he mentioned the word injunction.

Q. In relation to the general question of whether or not they were going to proceed, did he make any reference to that particular subject matter?

A. You mean proceed with the demonstration?

Q. Yes, sir.

A. Yes, sir.

Q. What did he say about that?

A. Referring to my notes, he said: "In our Movement here in Birmingham we have reached the point of no return."

Q. He said: "We have reached the point of no return"? I want to be sure that I understand you correctly.

[fol. 301] A. Yes, sir. And: "We have gone too far to turn back now."

Q. All right, anything else?

A. That is all that I have that I recall.

Q. Did he make any reference to what the authorities would understand?

Mr. Shores: I object to his continuing leading of the witness, with reference to so and so.

The Court: Sustain.

Q. Well, let me ask you this: you say you called this in, this news release, to the UPI?

A. Yes, sir, I called in the basis of this release. All news releases are supplemented with background information. Part of this was a supplement, but the direct quotes are mine.

Q. Is there a direct quote there with reference to: "We have reached the point of no return and now the authorities will know that the injunction can't stop us"?

A. Yes, sir.

Q. Was that actually a quote you gave them?

A. I believe it is. I will have to refer to my notes again. The quote that I called in was: "Now Mr. Connor will know that the injunction can't stop us."

Q. Now Mr. Connor will know?

A. Yes, sir.

Q. And there was a slight change in it, in the release that went out over the wire?

A. Yes, sir, there was.

Q. Did Rev. Abernathy make any statement about going to jail?

A. Yes, sir, he did.

Q. Was this on this same occasion?

A. Yes, sir.

Q. What did he say?

A. Well, when he first appeared before the group he said in effect that he felt better that now tomorrow he would be going to jail.

[fol. 302] Q. That was the Rev. Abernathy?

A. Yes, sir.

Q. Yes, that is Ralph Abernathy. Is he a Reverend? I have never known.

A. To my knowledge he is a Reverend and a doctor.

Q. Abernathy?

A. Yes, sir.

Q. All right. Was there a call made for volunteers that night?

A. Yes, sir, there was a call.

Q. Who made it?

A. I think there were several actually took part in the call, but I believe Rev. Abernathy actually led the call, if you could call it that.

Q. Did they get any volunteers that night?

A. Yes, sir.

Q. How many, approximately?

A. About fifty, I believe.

Q. Do you recall the names of any of the others who participated in helping and assisting with the call?

A. I believe the Rev. Shuttlesworth led the singing.

Mr. Shores: Your Honor, I object to what he believes.

The Court: Sustained.

Q. Mr. Stanton, you can state your best recollection of the matter.

A. To my best recollection the Rev. Shuttlesworth was leading the singing, but Rev. Abernathy was actually in charge of the call for volunteers to the best of my recollection.

Mr. McBee: All right, sir, thank you, that is all.

## Cross examination.

By Mr. Shores:

Q. Mr. Stanton, for whom do you work?

A. I am employed by the Winston-Salem Broadcasting Company by Station WSGN in Birmingham.

Q. I believe you said you were present on the meeting April 11, 1963?

[fol. 303] A. Yes, sir.

Q. And what time did you arrive at this meeting?

A. I would say approximately 8:00 o'clock to 8:15.

Q. Had the meeting started when you arrived?

A. Yes, sir, they were singing when I got there.

Q. How long did you remain at the meeting?

A. I left after the call for volunteers.

Q. How many persons made speeches at this meeting?

A. There were four or five ministers who spoke.

Q. Can you name the ministers who spoke?

A. To the best of my knowledge there was the Rev. M. L. King, Sr., the Rev. M. L. King, Jr., the Rev. Abernathy, and Rev. Shuttlesworth.

Q. I believe—who made the statement that they were going to march the next day?

A. The Rev. Abernathy made the statement: "I feel better tonight because tomorrow me and Dr. King are going to jail." I believe that was the way he put it.

Q. Did he say they were going to the jail to visit some prisoners there? Did he elaborate?

A. No, he did not state the purpose.

Q. Did anyone make the statement that they were going to march?

A. I don't know whether the word "march" was used or not. I could refer to my notes.

Q. Can you refer to your notes?

A. Yes, sir. Yes, sir, the word "march" was used.

Q. Did they elaborate on the meaning of march, what the purpose was, where they were going to march?

A. No, sir, the only quote I have is that of the Rev. King in which the word "March" was used.

Q. Do you know whether it was in reference to any religious ceremony?

A. No, sir, I don't. It simply said: "Injunction or no injunction we are going to march tomorrow."

Q. That is all, you may come down.

[fol. 304] Mr. McBee: May it please the Court, may this witness be excused from this case and also from the rule, as his job would require him and he would like to cover this hearing for his company as well as another case that is going on in the building at this time?

Mr. Shores: We have no objection.

The Court: All right, you are excused from the rule and the case.

(Witness excused.)

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[fol. 305] MAURICE HERMAN HOUSE, called as a witness, being duly sworn, was examined and testified as follows:

Direct examination.

By Mr. McBee:

Q. Your name, please?

A. Maurice House.

Q. And what is your occupation, please?

A. I am a lieutenant of police, Birmingham Police Department.

Q. Lt. House, did you have occasion to be present at a gathering which took place—I am not certain that I know the proper name—I do know it is the Gaston Motel, and maybe there is some more name to it, in the City of Birmingham on the 11th day of April of 1963?

A. Yes.

Q. In order to get in the record, where is that motel located?

A. That is the Smith & Gaston Motel. It is in the 1500 Block of 5th Avenue, North.

Q. Now, at that meeting, or that gathering, do you recall seeing any of these defendants?

A. Yes.

Q. Would you name those whom you recall that you know that you saw there?

A. Well, I saw Rev. Shuttlesworth, Rev. King—that is Martin Luther—and Rev. A. D. King, Rev. Abernathy—

Q. Let me interrupt you just a moment. You are referring to Rev. Martin Luther King, Jr.?

A. No—well, the Rev. Martin Luther King, and Rev. A. D. King, both, were there, Rev. Abernathy, Rev. Wyatt Tee Walker.

Q. Rev. Wyatt Tee Walker. Now, I understand that there is a Martin Luther King, Sr. I want to identify the distinction between the two. Do you know a Martin Luther King, Sr.?

A. All I know is one. I know him when I see him.

Q. By the way, he isn't here this morning?

A. No.

Q. Have you seen him around the courthouse since this [fol. 306] trial has begun?

A. Yes, sir, I saw him yesterday.

Q. You saw him yesterday. Now, on the occasion of the first release, were there any others assembled in this area?

A. Yes, there were. Al Hibler was standing on the balcony.

Q. That is the blind singer, I believe?

A. That's right. I would estimate 200 people were gathered just outside the circle from the press conference.

Q. Were they whites, or colored, or what?

A. Three were colored. There was a few whites there. I don't know who they were.

Q. Now, did you observe any members of the press, or radio, or television there?

A. Yes, sir.

Q. How many of them were there, in your best judgment?

A. I would estimate fifteen to eighteen at least.

Q. At that meeting, did you see any written instrument which had any part in the meeting, or was used in any way in the meeting?

A. Yes, sir.

Q. Would you look at this paper that I am showing you?

The Court: Let that be marked by the reporter as an exhibit.

Mr. McBee: Would you please mark it City's Exhibit No. 2 for identification.

(Whereupon the above mentioned document was marked Complainant's Exhibit 2, identification only, and is set out in words and figures at the end of this transcript.)

Mr. Shores: May we see it, Your Honor?

(Whereupon the above mentioned document was handed to Mr. Shores.)

Q. Would you look at the document marked City's Exhibit No. 2 and state what that document is?

A. This is a news bulletin put out by the Alabama Christians for Human Rights. It was a release that was brought [fol. 307] there, several of them were brought there by Rev. Wyatt Tee Walker about 12:45 on the 11th. He distributed this bulletin to all the members of the press, and also he gave me this one.

Q. All right. What was done with it, if anything, other than distributing it?

A. After it was given to all of us, Rev. Martin Luther King took one copy of it and read verbatim the entire text.

Mr. McBee: All right, we offer the exhibit in evidence, may it please the Court.

(Whereupon the above mentioned document was received in evidence, and is set out in words and figures at the end of this transcript.)

Q. Now, at that time, after the reading of the written news release, did any of the other defendants, including—well, any other defendants in this case have any words to say to the group?

A. Yes.

Q. All right, sir, would you state—

A. The Revs. King, Abernathy, and Shuttlesworth were seated at the round table. After Rev. King read this statement, Shuttlesworth read from a typed statement more or less re-affirming what was said in the statement that was read by Rev. King. He had other remarks to make.

Q. Now, may I ask was his written statement distributed also?

A. No, it was not.

Q. I see. All right, sir, what did he say when he read that paper?

A. I don't recall all the details of the statement, but I would say in substance—

The Court: Whose statement is that?

A. Rev. Shuttlesworth.

The Court: All right.

A. Yes, he read that, and after he got through reading it he made the statement, "That they had respect for the Federal Courts, or Federal Injunctions, but in the past the [fol. 308] State Courts had favored local law enforcement, and if the police couldn't handle it, the mob would."

Q. "If the police couldn't handle it, the mob would". Was that a direct quote?

A. That's right, after stating that, "The movement would continue. He was aware of the injunction", and in response to, I believe to a question by one member of the press, he used the phrase "Damn the torpedoes, full speed ahead."

Q. All right, sir.

A. That is about all that he said. Rev. Abernathy then spoke, said, "He was a pastor of a church in Georgia, but that he was a native of Birmingham, and felt that he

belonged here in this movement", and he too made one remark that I remember: "Give me Liberty or Give me Death."

Q. Uh-huh.

A. And—

Q. All right, did he say anything about the injunction, whether or not the injunction would stop them?

Mr. Shores: Your Honor, we object to his leading. He is leading the witness. He can ask what he said, not put words in his mouth.

The Court: Sustained, don't lead, if you will.

Q. Do you have notes that you took on that occasion?

A. Yes, sir.

Q. Would you refer to your notes and see whether you find he did, or did not?

A. All three of them mentioned the injunction, and they were going to proceed ahead. Rev. Martin Luther, in response to a question, said, "We will continue today, tomorrow, Saturday, Sunday, Monday, and on." Shall I comment on any other notes I have got, Your Honor?

Q. All right, now, that was Rev. Martin Luther King made that statement?

A. Yes. He was asked—

[fol. 309] Q. All right, go ahead.

A. Whether the boycott was affective on the merchants, and he answered that they had made a check that morning, it was very successful, and as I recall, he said it was 93, or ninety something percent affective on the downtown merchants.

Q. All right. Now, a moment ago, you made the statement all three of them said that they were going to proceed regardless of the injunction, or words to that affect. I don't recall the exact words you used.

A. I don't recall whether they said regardless of the injunction, but all three of them in their statement says, "This statement that Rev. Martin Luther King read was a joint statement of the three", and so stated on the top of his statement, and all three of them mentioned knowledge of

the injunction, and said they were going to continue on. I believe Rev. Martin Luther King stated that the—just before stating, “We will continue on today, tomorrow, and Saturday, Sunday, and Monday, and on”, just before that remark, he stated that, “The attorneys would attempt to dissolve the injunction, but we will continue on today, tomorrow, Saturday, Sunday, Monday, and on”.

Q. All right.

A. I don't recall offhand any other part of the—of this conference.

Q. Now, Lt. House, did anybody object, any of those—did Rev. A. D. King object to this policy, anybody speak up and say we object to this thing?

Mr. Shores: We object to that as leading.

The Court: Don't lead him.

Mr. McBee: I am not leading, I don't think, but anyway, I will rephrase the question.

Q. What sort of reaction did you hear from those present, including the Rev. A. D. King?

A. He said on three or four occasions, or two I remember specifically, when he remarked, “Dam the torpedoes”, there [fol. 310] was a loud applause by everyone in the background, and also the group that was gathered close by there, and also to “Give me liberty or give me death”, there was a lot of noise and applaud to that. There was applauding on several occasions. I don't recall the exact terms.

Q. You don't know whether they applauded when they said, “We are going to continue today, tomorrow, Saturday, Sunday, and Monday” or not?

Mr. Shores: We object to leading the witness again.

The Court: Sustained. Mr. McBee, I think it is not necessary to indicate what reply you want him to make.

A. I might say I heard no objections.

Mr. Shores: The Judge sustained the objection.

The Court: Don't make any voluntary statements.

Q. All right, I think it would be a fair question to ask whether or not you ever, at any time, heard anybody present, including the leaders who are under the present contempt citation, or anybody else object—

Mr. Shores: We object to that question.

Q. —or state that the remarks then being made, and sentiments then being offered were not their sentiments?

Mr. Shores: We object to being vague, and it is too indefinite as to what leaders.

The Court: Overruled.

A. I would like to have the question.

The Court: Just let him read it.

Mr. McBee: Would you read the question to him so we will have it in the exact terminology?

(Whereupon the Court Reporter read the last above recorded question.)

Mr. Greenberg: We have a further objection as to relevancy. I don't know there is a requirement that there be an objection made to a statement being given by somebody else.

The Court: Objection overruled.

[fol. 311] A. I heard no one object.

Mr. McBee: That is all.

Mr. Shores: No questions.

(Witness excused.)

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[fol. 312] HARRY L. JONES, called as a witness, being duly sworn, was examined and testified as follows:

Direct examination.

By Mr. McBee:

Q. State your name, please?

A. Harry L. Jones.

Q. What is your occupation, please?

A. Detective, City of Birmingham.

Q. What— How long have you been a detective for the City?

A. Since last November, 1962.

Q. Since 1962?

A. Yes sir.

Q. You have been a police officer for the City before that?

A. Approximately ten years.

Q. Now, did you have occasion, Mr. Jones, to talk to persons on Easter Sunday after certain arrests were made relative to or growing out of a march, parade, procession, or whatever is the proper word, at the City Jail?

A. Yes sir, I did.

Q. Do you remember the names of those arrested whom you did interview?

A. Yes sir.

Q. Would you tell us which ones you did interview?

A. A. D. Williams King, Melton Henry Smith, Jr.—

Q. Alright.

A. John Thomas Porter, Joshua W. Hayes.

Q. Joshua W. Hayes. Alright, did you inquire of these defendants whom you interviewed whether or not prior to engaging in the demonstration, parade, or procession, or whatever you choose to call it, they did not know of the injunction?

A. Yes, I did.

Mr. Greenberg: Apparently, this is leading to a statement which will incriminate these parties, statements against their interest. I would like on voir dire to show these statements were voluntarily made.

[fol. 313] Q. Did you, at the time you talked to these several defendants whom you have named, tell them that it would be better for them if they would make statements against their interest, or confess, or worse for them if they didn't?

A. No sir.

Q. Did you offer them any reward, or hopes of reward?

A. No sir.

Q. In any manner, or form, or kind?

A. No sir.

Q. Did they talk with you voluntarily?

A. Yes sir.

Q. Alright.

Mr. Shores: I would like to further question him on voir dire and ask him whether or not you told them that the statements might be used against them?

A. I told them the statements could be used for or against them, that they didn't have to make a statement if they didn't want to.

Q. Alright. With reference to these four respondents, or defendants, whom we have named, what did they say with reference to their knowledge of the injunction prior to having participated in this particular activity on Easter Sunday.

Mr. Shores: We object to the way that question is framed.

The Court: Objection overruled.

A. All four stated they had knowledge of the injunction.

Q. Did you discuss with them whether or not they had participated in the march, or the procession, or the demonstration, or whatever it might be called?

Mr. Shores: We object again. I think he is leading the witness.

The Court: Objection overruled.

A. Yes, I did.

Q. What did they say with respect to that?

A. Rev. Porter stated he was one of the leaders.

Q. Alright, Porter said he was one of the leaders?

[fol. 314] A. Yes.

Q. Alright.

A. I asked him if he was one of the leaders of the march, and he said, "Well, I was in the front row marching with them. I guess you could call it that." That is the statement he gave me.

Q. "I guess you could call it that."

A. Yes sir.

Q. Alright.

A. And Rev. King, he stated that he was one of the leaders of the march.

Q. That is A. D. King you are speaking about?

A. He gave me the name of A. D. Williams King.

Q. A. D. Williams King. Alright, did they say what they had done with the injunction, they had received the injunction?

A. I asked the Rev. A. D. Williams King if he had been served, and he said that he had, but he didn't even bother to read it.

Q. Didn't bother to read it?

A. And I asked him why, and he said, "Because it is too broad and vague."

Q. Uh huh. Alright, did you talk to Porter about it, asked if he had been served?

A. He said he had.

Q. What did he say he had done with his, if anything?

A. He didn't say, I don't think.

Q. Now, did you speak to John Henry—no, Nelson Henry Smith, too?

A. Yes, I did.

Q. Did he state whether or not he had been in the procession, or parade, or whatever they choose to term it?

A. I didn't ask the direct question if he was in the procession. I saw him in the procession.

Q. You saw him in the procession?

A. Yes sir.

Q. What about Joshua W. Hayes?

[fol. 315] A. He stated he was with the leaders on the

march. I asked him about the injunction. He knew of it, he said. I asked him was he just marching in the face of it anyway, and he said, "Yes, he was doing it for human dignity."

Q. Alright, I believe you stated that each of them said they knew of the injunction, all four?

A. Yes sir, all four knew it.

Mr. McBee: Take the witness.

Cross examination.

By Mr. Shores:

Q. Detective Jones, were you present when this parade or procession took place?

A. Yes, I was.

Q. From where did it originate?

A. It originated from a Church on 11th Avenue and 7th—7th Avenue and 11th Street, North.

Q. Were you there prior to the beginning of the parade?

A. Yes, I was.

Q. How long had you been there?

A. Approximately 15 minutes, I would say.

Q. Were there other officers also present?

A. Yes, there were other officers.

Q. In your best judgment, how many officers were present?

A. That would be hard to say. In my best judgment, I would say around—in the immediate vicinity of the Church?

Q. Yes.

A. I saw around ten, I would say, in uniform, and a couple in plain clothes.

Q. Were these on vehicles, motorcycles and three-wheelers?

A. Yes.

Q. Or, just—all of them, except the plain clothes men were on motorcycles or three-wheelers?

A. Well, I don't know if they were, or not. I saw motor-cycles and three-wheelers down there.

Q. In addition to the other officers?

[fol. 316] A. No.

Q. They were part of the force that were there?

A. I assume that's right.

Q. Now, how long had you been there prior to the beginning of the march, present at this Church prior to the beginning of the march, or procession, or parade?

A. Like I said, approximately 15 minutes.

Q. Approximately 15 minutes. Had a crowd gathered outside the Church?

A. Yes.

Q. In your best judgment, how many made up this crowd?

A. Several hundred. I couldn't say.

Q. Hundreds. Were the officers doing anything to disperse the crowd?

A. They were trying to keep the streets cleared and sidewalks cleared.

Q. Did they keep the streets clear and the sidewalks clear?

A. At this time, yes.

Q. About how many, in your best judgment, took part in this march, or parade, or procession, as you call it?

A. Maybe two hundred.

Q. Maybe two hundred. Now, did the parade group come out of the Church, or was it made up after the members came out of the Church?

A. The Rev. Porter, and Hayes, and King were among the first that came out, and I believe that Smith came out right behind them, and they started to walk down the street, and a large crowd formed behind them.

Q. Oh, just four officially made up the parade group, and members of the crowd just fell in behind them?

A. No, I didn't say that. I said they came out with a group.

Q. How many came out with them? How many came out in that group they were leading?

A. The ones I saw come out with them, I would say it [fol. 317] was about fifteen or twenty. When they started coming out, I proceeded to my car. I don't know how many came out. It was just that quick, and I went and got in my car.

Q. Then, you say as they proceeded down the street others fell in line behind them, is that correct?

A. That is correct.

Q. And some on the opposite side of the street marching in the same direction, or going in the same direction following them?

A. I don't know that. I was getting in my car.

Q. Where was your car located?

A. In the 1100 block on 7th Avenue.

Q. And, where is this Church? Was the Church in the same block?

A. I believe the Church was in the 1000 block, right on the corner of 11th Street.

Q. Now, I believe you said you talked with Rev. King, Rev. Smith, Rev. Porter and Rev. Hayes about the—you talked with them, personally, about the injunction?

A. I asked them about it, yes.

Q. And what was Rev. King's reply? Just what did you ask him about it?

A. I asked the Rev. King did he have knowledge of the injunction against parading, and demonstrations, and he said he did. I said, "Have you marched anyway?" He said, "Yes, I did." I said, "Why?" He said, "Because the injunction was too broad and vague."

Q. It was broad, and vague, and he didn't understand?

A. He said he didn't even bother to read it. He threw it away.

Q. Now, did you read the injunction?

A. No, I didn't.

Q. Do you know whether it said, "Unlawful parading"?

A. Like I said, I didn't read it.

Q. And Rev. King said he didn't understand it, it was too broad?

[fol. 318] Mr. McBee: He didn't say that.

Q. Did you make any arrests?

Mr. McBee: I object to the statement put into the witness' mouth, "He didn't understand it." He didn't say that. He said he didn't bother to read it, and threw it away.

Mr. Shores: He did say it was too broad, too vague.

Mr. McBee: No, he didn't say that.

Q. Will you state again whether or not you made the statement, Rev. King made the statement, it was too broad, or too vague?

A. He did say that.

Q. What did Rev. Smith say about it?

A. Rev. Smith said he had knowledge of it.

Q. Oh, he just had knowledge of it? He didn't say whether he had read it, or been served with an injunction?

A. No, he just knew of the injunction.

Q. What did Rev. Porter say?

A. He said he knew of the injunction.

Q. What did Rev. Hayes say?

A. He knew of the injunction. He said he was marching anyway for human rights.

Q. Did they state whether or not they had been served?

A. Rev. Porter stated that he had been served.

Q. Did Rev. Hayes or Rev. Smith state whether or not they had been served?

A. Rev. Smith didn't state whether or not he had been served, no.

Q. What about Rev. Hayes?

A. I don't recall. I don't believe he did.

Q. Did you identify anybody else that was arrested that day by name?

A. No.

Q. In other words, all you identified was A. D. King, Rev. Smith, Rev. Porter and Rev. Hayes?

A. Yes sir.

[fol. 319] Mr. Shores: That is all.

The Court: Anything further?

Mr. McBee: No, that will be all.

(Witness excused.)

[fol. 324] DETECTIVE C. C. RAY, called as a witness, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. McBee:

Q. What is your name, please?

A. C. C. Ray.

Q. What is your occupation?

A. Detective, City of Birmingham.

Q. Were you present with Detective Jones on the occasion immediately following the arrest of some parties on Easter Sunday at the jail?

A. Yes, sir.

Q. Did you interview some of the defendants who were there on that occasion?

A. Yes, sir.

Q. Did Detective Jones interview some of them?

A. Yes, sir.

Q. Did you interview a defendant known as Theodus or T. L. Fisher?

A. T. L. Fisher, yes, sir.

Q. Did you at the same time interviews of other defendants was in progress discuss with Rev.—I don't know whether it is Rev. or not.

A. He said it was Reverend.

Q. —Rev. Theodus Fisher whether or not he participated in this parade or procession?

Mr. Shores: We object, and may I examine Det. Ray first on voir dire prior to his taking statements from these witnesses?

The Court: I will advise counsel he will have to qualify his examination so that the witness can be protected as far as a criminal violation is concerned.

Mr. McBee: Your Honor, I was under the impression that they were all notified by Det. Jones of their—

The Court: I don't think that is the testimony at this state.

Mr. Thompson: May it please the Court, I say this: I don't know whether Mr. Ray has a written statement or whether he has a conversation with this witness or defendant or not. If it is simply an admission against interest [fol. 325] there is no requirement calling for this witness to be advised of his rights on anything.

Mr. Greenberg: We would respectfully disagree with that, Your Honor. I think the Fourteenth Amendment protects a witness with reference to admissions as well as statements.

Mr. McBee: We can find out quickly enough whether or not he did.

The Court: All right.

Mr. Shores: Let me examine him on voir dire.

Mr. McBee: I think I am entitled to predicate the admissibility of evidence if in truth and fact it can be done. I don't know.

Q. Did you on this occasion advise this defendant Theodorus L. Fisher—

Mr. Shores: We object to the way he is forming that question. He is leading the witness.

Mr. McBee: I will change the form of the question.

Mr. Shores: Ask him what he told the witness.

Q. Did you or did you not on the occasion when you say you talked to Theodorus L. Fisher or T. L. Fisher, advise Rev. Fisher on that occasion that—

Mr. Shores: Your Honor, we object to that question. He is going to put words in that witness' mouth. He is indicating what he wants him to testify to.

The Court: The objection is overruled.

Q. Did you advise the defendant that he was free to make a statement if he wished and that if he did make a statement his statement might be used against him; did you offer him any reward or any hope of reward; did you offer him any inducements to make a statement; did you tell him it would be better for him to make a statement or worse for him not to make a statement?

Mr. Greenberg: We object to that statement. That is ten questions in one.

The Court: Overrule.

A. No, sir, I didn't do any of those things.

Q. Did I understand you to say you did nothing in the [fol. 326] way of advising him he did not have to make a statement?

Mr. Shores: Your Honor, he has answered that.

Mr. McBee: I am just trying to find out what he said.

A. I did not do any of those things, Mr. McBee.

Q. In other words, you laid no predicate at all?

A. No, sir.

Q. Did he make a statement to you?

A. Yes, sir.

Q. What did he say?

Mr. Shores: We object to what he said, Your Honor.

Mr. Breckenridge: Your Honor, I submit a sufficient predicate has been laid as far as confession in Alabama is concerned in that he did not tell him it would not be easier on him if he made a statement or rougher on him if he did not make a statement. I don't know that there is any law in Alabama that requires the officer to say the statement may be used against you, but I do believe in connection with a confession it is necessary that the officer do

not offer any hope of reward or any threat of punishment for the making or not making of a statement; and the witness in this case has testified he did not offer any hope of reward and he did not offer any threat and he said he did not do either.

Mr. Shores: Your Honor, there may not be any citation in Alabama, but there is a higher citation, the Fourteenth Amendment, which specifically protects an individual in his right not to testify or give evidence against himself. Now, what he is about to give is statements against interest of this defendant without first having warned him of his rights that are protected by the Constitution and we submit any statement he makes now would be in violation of this defendant's rights protected by the Fourteenth Amendment of the Constitution of the United States.

The Court: Sustain the objection.

Mr. Breckenridge: We except.

Mr. McBee: That is all.

(Witness excused)

[fol. 327] The Court: We will take this opportunity for a recess of about ten minutes.

(Short recess)

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OFFICER R. N. HIGGINBOTHAM, called as a witness, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. McBee:

Q. Your name, please.

A. Officer R. N. Higginbotham.

Q. What is your official position or occupation?

A. Police officer, City of Birmingham.

Q. Do you recall an occasion on Easter Sunday when there were some arrests made with reference to a parade

or procession or demonstration or some sort of incident of that type?

A. I do.

Q. Were you one of the arresting officers?

A. Yes, sir.

Q. Did you arrest any of the defendants who are now in this contempt case?

A. Yes, sir.

Q. Which ones did you arrest?

A. I arrested A. D. King, John T. Porter, J. W. Hays, Jr. and N. H. Smith, Jr.

Q. J. W. Hays you say?

A. Right.

Q. And N. H. Smith, Jr.?

A. Yes, sir.

Q. Were they in this march or procession or parade or whatever it was?

A. Yes, sir.

Mr. McBee: You may take the witness.

Cross examination.

By Mr. Shores:

Q. Officer Higginbotham, were you present at the time this parade or procession or demonstration began?

[fol. 328] A. I was.

Q. From which point did it originate?

A. It originated from 7th Avenue North and 11th Street at the church next to the corner.

Q. Did it begin on the outside of the church or did they march out of the church into the street?

A. The first I noticed they were coming down the steps of the church.

Q. How many?

A. There were four ministers walking two abreast that came off the church steps.

Q. Were there anybody following them?

A. Yes.

Q. How many following them?

A. Well, as they progressed down the sidewalk there was more and more following in behind them at this point.

Q. Now, these who were following in behind, were they parties of this demonstration or parade, or were they the outside individuals who were already outside the church and just fell in behind?

A. I observed at this time there were quite a few coming out of the church in twos side by side, and I did notice several outside the church that were forming in line.

Q. That is what I was getting at. Do you have an idea as to how many came out of the church in twos?

A. No, I didn't stay very long at this point.

Q. What position did you take when you saw them coming out of the church?

A. I went south on 11th Street to 6th Avenue.

Q. Were you on a motor—

A. I was on a motorcycle.

Q. What was your destination? Where did you stop?

A. At 11th Street and 6th Avenue.

Q. Was it there that you arrested these four respondents?

A. No, it wasn't.

[fol. 329] Q. What did you do when you got to 6th Avenue and 11th Street? What did you do there?

A. Well, I noticed they were still coming south on 11th Street and I went on down to 5th Avenue and 11th Street.

Q. Were you leading the group?

A. No, I wasn't leading them.

Q. Were they on the sidewalk or out in the street?

A. At this time they were on the sidewalk.

Q. Did they block traffic?

A. Traffic was being blocked at this time.

Q. By whom?

A. Well, a lot of the crowd that was in the rear were surging to the front and they spilled out into the street at this time.

Q. Were there any officers besides you at the scene?

A. Yes, there were several officers.

Q. How many?

A. I don't know the number exactly.

Q. Could you estimate in your best judgment how many?

A. I would say there was over ten at this time.

Q. Were they in the immediate vicinity of the church?

A. Yes.

Q. What time did you go down to the church, that is, how long were you at the church before the parade started or procession?

A. Approximately a half hour.

Q. Had a crowd gathered at that time on the outside?

A. Yes, there was a crowd.

Q. Just what was the crowd doing?

A. Before they came out of the church they were just standing around.

Q. Did you disperse any of the crowd?

A. No, I didn't.

Q. Did any of the other officers disperse any of them in your presence?

A. I didn't see any.

[fol. 330] Q. In other words, Officers permitted them to congregate there in large numbers?

A. I don't know whether they permitted them to or not. They were gathered there.

Q. And they didn't do anything about dispersing them?

A. In the vicinity I was they didn't.

Q. Did you say you made the arrest of Rev. King, Rev. Porter, Rev. Hays and Rev. Smith? Did anybody assist you?

A. At this time they didn't.

Q. What were they doing when you arrested them?

A. They were marching north between 10th and 11th Street through a vacant lot.

Q. Through a vacant lot? They were not on the street when you arrested them?

A. No. They had just turned north out of 5th Alley and was turning into a vacant lot there.

Q. Were they loud or boisterous when you arrested them?

A. The four ministers wasn't.

Q. Just what was the conduct of the four ministers at the time you arrested them? Just what were they doing?

A. They were marching.

Q. And at the time you arrested them they were on somebody else's property, were they not?

A. That's right.

Q. Did you see anybody invite them and tell them they could come on through that property or come on that property?

A. No, I didn't.

Q. Now, when you said marching, were they marching like soldiers or just walking?

A. Well, the ministers were marching by twos side by side, two in front and two in the rear.

Q. Was there any band playing?

A. No.

Q. Were there any uniformed group among the people who were marching?

[fol. 331] A. I didn't see them.

Q. Do you know their destination?

A. No, I do not.

Q. Were there any other officers with you at the time you arrested these four?

A. There were several officers that came up at this time right after I made the arrests.

Q. What did you say to them and what did they say to you, if anything, when you made the arrests?

A. I asked them did they have a permit to parade and they stated that they did not.

Q. And what else was said by you?

A. That was all at this time.

Q. Did you tell them they were under arrest?

A. I did.

Q. Did you tell them what charge you were placing against them?

A. I told them they were being arrested for parading without a permit.

Q. They didn't resist in any respect, did they?

A. They did not.

Q. What did you do with them when you told them they were under arrest for parading without a permit?

A. A. D. King and John T. Porter, I started marching them north through the vacant lot and at this time some other officers had arrived and they took the other two, it was Hays and Smith, under custody and they were to the rear of me.

Q. In other words, you were marching and the other officers were marching along? Were you in twos when you started marching then? Where were you taking them to?

A. To a patrol wagon.

Q. Did you march to the patrol wagon?

A. No, not exactly march. We were just walking.

Q. Well, were you walking just as they were walking when they were coming up the street?

[fol. 332] A. I don't think so.

Q. How many officers arrived and how many were arrested at that time?

A. I don't know. At this time there was a large crowd that had gathered and it was getting larger all the time and there was a lot of singing and a lot of shouting and a lot of heckling going on and my only thought was to get them out of this crowd as soon as we could.

Q. Did the officers have the situation under control the whole time?

A. Now, after I put these two under arrest I don't remember looking back. I heard a lot of noise and there were a lot of people gathering and what happened behind me at this time I don't know.

Q. Now, you had made arrests before during these so-called demonstrations, had you not?

A. I had.

Q. And during this time were all these arrests handled by the Birmingham Police Department?

A. As far as I know they were.

Q. As far as you know you didn't have to call in any State patrol or Highway Patrol or any help from the State?

A. I haven't, no.

Q. Were any arrests made by members of the Highway Patrol or the Sheriff's Department?

A. I wouldn't know if there have or hasn't.

Q. As far as you know the City Police Department had everything under control and made all the arrests as far as you know?

A. To the best of my knowledge they have.

Mr. Shores: That is all.

Redirect examination.

By Mr. McBee:

Q. Did you see anybody with robes on?

A. I did.

Q. Who had the robes on?

A. The four ministers that were in the front, and I ob-[fol. 333] served another one that was. I would say ten or fifteen yards to the rear of them at this time with a shorter robe on.

Mr. McBee: That is all.

Recross examination.

By Mr. Shores:

Q. Did any other officer assist you in arresting these four?

A. Not that I know of at this time.

Q. You are sure of that?

A. If he did I don't remember it. There was such a crowd gathered at this time and there was so much noise, there could have been.

Mr. Shores: That is all.

Mr. McBee: You may come down.

(Witness excused.)

Mr. McBee: Your Honor, we want to introduce the verified petition. I think Your Honor will take judicial notice and knowledge of your records, but we want to introduce the records showing the service of the writ of injunction upon the several respondents. I doubt that it is necessary to introduce the docket sheet, but we would like to call Your Honor's attention to it.

Mr. Shores: We object to the introduction of any—

Mr. McBee: The docket sheet of the Court? You object to that?

Mr. Shores: Of this Court?

Mr. McBee: Yes, this Court.

Mr. Shores: No, we don't object to that. I think the Court takes judicial knowledge of it.

Mr. McBee: That is what I am saying.

Your Honor, we are about at the point where we probably might be able to rest. May we have a few minutes to confer before we do?

The Court: We will take about five minutes recess then.

(Short recess.)

[fol. 334] Mr. McBee: If it please the Court, we did have some additional witnesses, but they have gone out of town. We have unfortunately not issued subpoenas for them because we thought they would be here, but they are not here. Of course, we do not want under the circumstances to delay the court, so we will rest at this time.

The Court: All right.

Mr. Shores: Your Honor, we would like to offer all of the Motions that we offered at the beginning of the trial: our Plea in Abatement, Motion to Vacate and Discharge, and Motion for Severance.

The Court: The same ruling will apply; Motions are overruled.

# DEFENDANTS' MOTIONS AND RULINGS THEREON

Mr. Shores: We would like at this time to offer a motion to exclude the evidence on all of these respondents on the ground that the charges made against them were matters in which they were involved in which they were protested by the First and Fourteenth Amendments to the Constitution of the United States, rights of free speech and free assemble. And under the Louisville case of Thompson versus Louisville there has been no testimony that would sustain the charges made in this contempt proceeding. For that reason we would like to move to exclude for all of these respondents and respectfully request judgment in favor of these respondents.

The Court: Motion overruled.

Mr. Shores: We would further like to move to exclude this with reference to the respondents Ed Gardner, Abraham Woods, Jr., Calvin Woods, Johnny Louis Palmer, and Andrew Young. There has been no testimony connecting these respondents in any respect with this citation.

The Court: Do you have anything you want to state with reference to that Motion?

Mr. McBee: With reference to Andrew Young, the testimony is clear that he was participating in meetings, was [fol. 335] soliciting volunteers to participate in connection with these movements. Your Honor will understand that this is a conspiracy, and, of course, the joint action of all parties.

Mr. Greenberg: Your Honor, this is the first notice we have had of a conspiracy.

Mr. McBee: That is what you are charged with. The action of all of the respondents is chargeable to each of the respondents, or each is chargeable to all, whichever way you want to look at it. As to Gardner, Abraham Woods, Calvin Woods and Johnny Louis Palmer, I do not recall that we have had specific direct evidence in the record concerning them, other than that they have been charged in the injunction with being members of your organization.

Mr. Shores: In answer to this, Your Honor, this is a criminal proceeding as well as a civil proceeding. They are to be charged and tried as in a criminal case. There has been no charge of any conspiracy. Each was charged individually as violating an injunction. The only testimony as to Andrew Young is that he was present at a meeting, and that is no crime to be present at a meeting.

In order to convict the person of criminal contempt there must be proof beyond a reasonable doubt as in any other criminal case. We submit that there has been no testimony with respect to Abraham Woods, Jr., Calvin Wood, Johnny Louis Palmer and Ed Gardner. And we submit that the only testimony with reference to Andrew Young was that he did attend a meeting, and it is no crime to attend a meeting. And the injunction did not enjoin them from attending meetings. So we certainly submit that these five would not be covered, as there is no evidence or testimony linking them up with violating any injunction.

The Court: Motion as to Ed Gardner, Calvin Woods, Abraham Woods, Jr., Johnny Louis Palmer—any other including in your motion?

Mr. Shores: Andrew Young, Your Honor.

The Court: I will overrule your motion as to Andrew Young.

[fol. 336] Mr. Shores: Your Honor, James Bevils, I don't believe that there was anything in connection with him other than he attended a meeting.

Mr. McBee: Yes, the evidence is clear that he was urging them to march. That is what he was charged with, and the evidence is exactly clear on that point without dispute.

The Court: Overrule as to James Bevils. Your Motion is granted as to Ed Gardner, Calvin Woods, Abraham Woods, Jr., Johnny Louis Palmer.

Mr. Shores: Your Honor, on examining this docket sheet it does not appear that these respondents, all of these respondents were served.

The Court: There might not be all the service marked upon the sheet. You see, it comes from the Sheriff's office and quite often service does not get entered immediately.

Mr. Shores: They ought to be dismissed for failure to show that they were served, and on that further ground we urge that the citation be dismissed.

Mr. McBee: It has already been demonstrated that they knew about it because they were making press releases that they were not going to abide by the injunction.

The Court: Let me hear your motion and state it into the record so that I can rule upon it.

Mr. Shores: We would like to move further that all of these respondents that have been cited for contempt be discharged, the evidence be excluded, and that they be discharged on the grounds that it has not been shown that they were served with notice of this court's injunction and of the motion to cite for contempt. This is a criminal proceeding and certainly it should be followed strictly.

The Court: The service on the back here is shown on this, which is also part of the record (indicating a document). I am reading from the back of the original of the contempt citation, which is what we are trying today. On [fol. 337] the reverse side executed 3:43 P.M. April 17 on Andrew Young. I will just read these that are left. Certificate April 16, execution date at 10:35 A.M. on T. L. Fisher. Certified April 16 10:35 A.M. on A. D. King. April 16 3:15 P.M. F. L. Shuttlesworth. April 16 10:35 A.M. Ralph Abernathy. April 17 3:44 P.M. on Wyatt Tee Walker. April 16 10:35 A.M. Martin Luther King, Jr. Have I covered all of those that are left?

Mr. Greenberg: Do I understand that Your Honor has indicated service on the contempt citation?

The Court: That's right.

Mr. Greenberg: But the execution I believe we are talking about is whether there was service of the temporary restraining order. All of that was served after the events of Good Friday and Easter Sunday.

The Court: Execution is indicated on the docket sheet on April 11 on all of these particular parties interested in this case as to the writs of injunction, and particular filed here in the filing of the summons, which is indicated April 11 as the date shown here in the filing. Your Motion would be overruled.

Mr. Shores: We except. Your Honor, we were taken somewhat by surprise, having been informed that the City would probably go on through the day. Could we adjourn until after lunch now to give us a chance to talk to some of these witnesses?

The Court: We will adjourn until 1:30.

(Whereupon, at the hour of 11:27 A.M. April 23, 1963 the proceedings were in recess until 1:30 P.M., when the proceedings continued as follows:)

[fol. 338] (Proceedings reconvened at 1:45 P.M. pursuant to recess.)

The Court: All right.

Mr. Shores: We would like to call Mr. J. M. Breckenridge.

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J. M. BRECKENRIDGE, called as a witness, being duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Shores:

Q. Mr. Breckenridge, would you state your full name, please?

A. J. M. Breckenridge.

Q. And what is your official position with the City of Birmingham?

A. City Attorney.

Q. How long have you been City Attorney?

A. Since July of 1960.

Q. Will you state for the record your duties as City Attorney?

Mr. McBee: We would object, may it please the Court. The duties of the City Attorney are entirely irrelevant, incompetent, and immaterial insofar as the issues involved in this case. As I understand them to be, the issues are whether or not an injunction was issued, and whether or not these defendants violated the injunction with knowledge of it.

Mr. Shores: Preliminary question.

Mr. McBee: The question of what Mr. Breckenridge's duties could have no conceivable relevancy to the issues that Your Honor has called upon the try in this case.

The Court: I fail to see any connection, myself.

Mr. Shores: Your Honor, he drew the petition up. That is some relevancy. We want to show his duties. He drew the petition up.

The Court: Whether or not he drew the petition, or any part of it, I see no connection between his position and what he might have done in the violation of any injunction.

Mr. Shores: Your Honor, we still insist if the Court had no jurisdiction, or acted in violation of the Federal Constitution, then—and if the injunction is vague, and that sort of thing—

The Court: I think that the Court has indicated the position that it took with reference to the hearing, and your rights in that respect would be protected, because I have already indicated that regardless of whether or not this injunction might be issued invalidly, that the question was whether or not it was violated, and I also indicated the fact that the respondents had filed a motion, and filed demurrers, and answers was a general appearance, and had waived any question of the pleading to the jurisdiction of this Court. This is a pure case of a violation of a contempt of the order of the Court which had prima facie authority to issue such an order.

Mr. Shores: We are trying to show there is no complaining witness, and if there is no complaining witness, there is no case.

The Court: The order was issued on the basis of sworn affidavit. Now, you have put into issues the question of the affidavit by your answer, and the proof has been offered today and yesterday, and, of course, it rests upon that proof now.

Mr. Shores: That is what we are trying to rebut, the proof that the City has offered.

The Court: Are you trying to rebut factual information by this witness as to what has been offered from the stand?

Mr. Shores: What we are trying to show is that the City did not bring any suit.

The Court: The City did not bring any suit? Is that what you indicated?

Mr. Shores: That is exactly what we are trying to indicate.

Mr. McBee: There has been no plea, so far as I have been aware of, that the City has not brought a suit. As a matter of fact, the City has brought a suit, and the fact of that suit is a matter of knowledge to Your Honor, because Your Honor has entertained jurisdiction in it.

Mr. Shores: The fact that it has been filed does not prove that the City has brought the suit.

[fol. 340] The Court: Are you seeking to find out who authorized him to file the suit? Is that the point?

Mr. Shores: Yes, sir, that is what we are seeking to do.

The Court: That might be an interesting question. I will allow him to testify to it.

Mr. McBee: We still object to that, Your Honor.

Mr. Shores: Your Honor, we raised that in the beginning. We filed an answer to this motion to show cause, and as one of our defenses in the answer, we alleged there was no showing the City authorized the bringing of this suit.

The Court: All right.

Q. Mr. McBee—

A. Breckenridge.

Q. I mean Mr. Breckenridge, by whom were you authorized to draw these pleadings and file this suit?

A. The suit was filed, and other suits with the City by the Law Department, prepared by the Law Department, and it was approved specifically, my recollection, by two Commissioners of the City. That is Commissioner Connor and Commissioner Hanes that I know of, and was not disapproved, so far as I know, by anyone.

Q. You say "So far as you know". Did they—when did they approve the bringing of the suit, and by what method?

A. It was discussed with them orally.

Q. It was discussed with them orally?

A. That's right.

Q. Did they meet in formal session?

A. No. If you are asking if there is any formal action on the minutes of the governing body of the City authorizing the bringing of the suit, my answer would be "No, there is none". It is not the practice, and never has been the practice to require formal action by the governing body of the city on the bringing of a suit on behalf of the City.

Q. Now, as City Attorney, you are the chief legal officer [fol. 341] of the City?

A. I think I could be styled as the chief legal officer of the City of Birmingham.

Q. In fact, you ordinarily, as chief legal officer, you prepare the various resolutions that the City Commission usually discuss and pass, do you?

A. I do.

Mr. McBee: We object. Counsel is leading his own witness.

A. Let me—

The Court: I will overrule the objection.

A. Let me qualify the statement I made awhile ago. When I said there was no formal action of the governing

body, there was formal action of the governing body authorizing issuance of the bond in this case, approved officially by all three Commissioners, and is on the minutes of the City. That bond, by implication, would, itself, ratify the filing and certainly be the approval of that board.

Q. Is that a formal action with respect to the bringing of the suit and filing of the suit?

A. Other than what I have told you is the only official action. When I say official, I mean action which is spread on the minutes of the City. It is not, and has not, over many years, been required that the City—that there be a resolution for the filing of a suit on behalf of the City. It has usually been done in the name of the City Attorney, or some assistant City Attorney.

Q. Are you acquainted, as chief legal officer, are you acquainted with the laws of the State of Alabama governing the City of Birmingham?

A. I hope I am. I think I am.

Q. Are you acquainted with the law which requires any action for the benefit of the City, or any resolutions to be passed by the board in formal session?

[fol. 342] Mr. McBee: We object to that, may it please the Court. It is a matter that is apparent that he is in court when litigation is required. It is proof of general provisions that relate to his attention on such things, and it relates to the enactment of ordinances, and the like. It is a function of the City Government in an administrative nature, and is not—

Mr. Shores: We object to Mr. McBee testifying.

A. It is a legislative—

The Court: He has a right to make his objection to the Court.

Mr. McBee: It is not legislative in its nature, but it is purely the matter of the administrative functioning of the City Government, and as Mr. Breckenridge has stated, the bringing of lawsuits in appropriate cases on behalf of the

City is done with the—by the legal department of the City and the general provision of the statutes he is referring to has no relevancy whatever. I object to going into those provisions because it clutters up the record.

The Court: Don't you think the question you asked is a legal question, whether or not he was familiar with such law. The law exist as it is, regardless of his familiarity with it.

Mr. Shores: He is the chief legal officer and expert in the field.

The Court: We don't seek expert legal opinion in this court. You may call the Court's attention to it in your closing arguments, but so far as to give it to the Court from the witness stand, I just think it should be done in another manner.

Mr. Shores: It wasn't a matter of the law I was trying to establish. The fact that he is legal officer, he advises and he draws the various resolutions requiring the bringing of the—well, I will withdraw that question.

The Court: All right.

Q. Now, you did present the bond to the City Commission? Did you present that?

[fol. 343] A. Presented a resolution to the City Commission, and the City Commission approved the execution of the bond by the Mayor. That was passed unanimously, and approved unanimously by all three Commissioners, and so appears on the minute books of the meeting.

Q. But, no resolution was presented and passed authorizing the bringing of this lawsuit?

Mr. McBee: That question has been answered. It is repetitious.

The Court: Sustained.

A. There was no resolution.

Mr. Shores: I believe that is all.

(Witness excused).

[fol. 344] JUDSON HODGES, called as a witness, being duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Greenberg:

Q. Please state your name.

A. Judson Hodges.

Q. What is your position?

A. City Clerk, City of Birmingham.

Q. How long have you held that position?

A. Little over six years.

Q. What are your duties in connection with that position, Mr. Hodges?

A. Well, I am secretary to the Commission. I keep the minutes, and all the permanent files of the City. That is mainly what it is.

Q. Do you keep resolutions adopted by the City Commissioners?

A. That is correct.

Q. Do you have a resolution adopted by the City Commissioners authorizing commencement of this suit?

A. I do not.

Q. Do you have a resolution adopted by these City Commissioners authorizing entering into a bond in connection with this suit?

A. I do.

Q. Do you, in connection with your position, keep a record of permits to hold parades?

Mr. McBee: We object to that, may it please the Court, unless these lawyers tell us that they contend that they have a permit, or had a permit. If that is not an issue in the case, we object to any testimony about permits vel non, or any other situations of any kind whatsoever.

The Court: Sustained.

Mr. Greenberg: May it please the Court, our position in connection with the issuance of permits to grant a pa-

rade is first of all there is a charge these defendants have paraded without a license. I would like to ascertain what [fol. 345] is the nature of marches, or parades in which permits are granted, and then we would like to inquire into the procedure to see how these are acquired. If the statute has not been applied, or has been applied in an unconstitutional manner, then there is no requirement on these defendants to have a permit any more than the others. That is our position.

The Court: Is there any evidence on the part of these defendants in the case, or respondents, that they applied for a license or permit?

Mr. Greenberg: First of all, we intend to show such evidence. Secondly, quite apart from that, there is no necessity to apply for a permit which is granted according to an unconstitutional procedure if there is a denial of equal rights under the law secured by the Fourteenth Amendment. We intend to develop it through this witness.

Mr. Breckenridge: As counsel has stated, I would like to object to that as incompetent, irrelevant, and immaterial, because if such facts exist, the duty would be on the respondents to apply for a permit, or to bring such matter to the attention of this court prior to the violation of the injunction as alleged in order that the court could determine whether or not the City ordinance required a permit.

Mr. Greenberg: We plan to establish through this witness the City Commission, in fact, does not issue permits for a parade.

The Court: Any evidence this witness might have as to the factual situation involving these respondents, I will allow him to testify about with reference to parade permits, and so forth. Any other occasion that might be involved, I don't think that would be relevant.

Mr. Greenberg: May we be permitted to establish the fact that the City Commission in fact does not issue permits for parades, or marches, and that these, in fact, are issued by the Clerk at the request of the traffic department,

so far as we are able to ascertain, in accordance with no statute or ordinance as is generally delegated by the City Commission?

The Court: I think that is an involved statement, and [fol. 346] you will have to go into it a little further, and I will let you prove anything this man has personal knowledge of.

Q. Do you keep records of permits issued for parades?

A. I do.

Q. Under what authority are these permits issued?

Mr. Breckenridge: We object, because the question calls for a question of law. The statute speaks for itself.

Mr. Greenberg: Withdraw the question.

The Court: The Court takes judicial knowledge of the ordinances of the City of Birmingham.

[fol. 347] Q. Mr. Hodges, if you know, has the Commission ever voted to grant a permit for a parade?

Mr. McBee: We object to that, whether the Commission has ever voted to grant a permit for a parade, unless they show they presented a request to the City Commission in this case to grant a permit, and which we do not understand they contend they have ever done.

The Court: Sustain the objection.

Q. Have permits for parades been granted?

Mr. McBee: We object to that, may it please the Court, unless he is talking about a permit which was made in this case, a request for a permit was made in this case, or on any occasion when any of the parades were conducted related to the evidence produced before Your Honor in this case.

The Court: If you can relate it to a specific occasion, I will allow him to testify about it. As to the general question, I don't think that I can allow it. I will have to sustain the objection to that.

Mr. Greenberg: Perhaps I can explain our position in briefer fashion. These respondents are in part being charged with not having applied to the City Commission

for a permit. It is our position, among other things, that the City Commission does not grant permits and never has; that these are granted by the City Clerk at the request of the traffic division according to no published rule or regulation. We can establish it very easily because that is in fact the practice.

The Court: I will let you ask the question and then I will rule upon the objection. I don't know that your question has reached the phase that you expressed so far. The questions have been very general.

Q. Will you describe the practice in accordance with which permits are granted, Mr. Hodges?

Mr. McBee: I didn't get that question.

Mr. Greenberg: Would you read the question, Mr. Reporter?

[fol. 348] (Question read.)

Mr. McBee: We object to that, may it please the Court, unless they are talking about the particular incidents involved in any of the parades that were conducted related to the issues in this case.

The Court: Do you have a copy of the City Ordinance at the present time with reference to—

Mr. McBee: Yes, I think we have it, Your Honor. It is Section 1159.

The Court: I think the question asking for the general practice in such instances cannot be allowed because the ordinance itself which is governing this situation allows certain discretion in the City Commission, and to attack the act of the Commission in this proceeding would not be relevant.

Mr. Greenberg: Your Honor, what we are trying to establish is the procedure set forth in this act has, as far as we have been able to ascertain, never been followed, and we would therefore submit it would be a denial of equal protection of law secured by the Fourteenth Amendment to require these respondents to follow it when, as a matter of practice, no one else ever has.

The Court: I will have to sustain the objection to the question. I think the ordinance is absolutely clear on that and the manner in which the action of the Commission in ruling upon a permission for a parade permit would have to be handled in another procedure other than the one here after a violation of a contempt order has been made.

Mr. Greenberg: With all respect, Your Honor, your statement presupposes an action of the Commission. We are trying to show there is in none of these cases action of the Commission.

The Court: I say this: The law requires it. Whether or not the Commission has done that is not any concern of this Court at this time.

Mr. Greenberg: But it is our position that certainly these respondents should be treated no differently than [fol. 349] anyone else. They should not be required to abide by a practice whereby, I might develop from this witness, that hundreds of permits have been granted under an entirely different procedure and that procedure, I might add, is something that never has been published and no one has any way of knowing it.

Mr. McBee: May it please the Court, I would like to say this gentleman comes to us from the New York bar, I believe, and he probably is not aware of the fact that F. L. Shuttlesworth was advised as early as April 5th that the responsibility for issuing permits for demonstrations of this type fell upon the entire Commission, and we expect the evidence to show, if we are allowed to go into it and if it becomes relevant, that there was no effort made and there has never been any effort made to present any request to the City Commission for a permit to conduct any of the activities that are referred to and described in Section 1159 of the Code. So, it is entirely erroneous to say to Your Honor in arguing questions of law that these defendants were not aware of the proper provisions of the law because they were told.

The Court: I have tried to keep the issues as clear as I could in the case and I think that any question propounded

to this witness as to his personal knowledge of the treatment of these particular people that sought a permit and were refused would be relevant to the case, but as to any general practice, I don't think that is relevant to the issues that I have here before me.

Q. Mr. Hodges, has the City Commission ever referred to you a request by any of these respondents to conduct a parade, demonstration or other public activity?

Mr. McBee: Now, wait, may it please the Court. We would like to suggest that that question is entirely too broad. Now, I don't know what may have occurred years ago, but we would object to the question as framed because it is too inclusive.

Mr. Greenberg: I will reframe it.

Q. Has the City Commission ever referred to you a request by any of these respondents of any sort made by them, let us say, in the last thirty days?

[fol. 350] A. They have not.

Q. Has the City Traffic engineer referred to you such a request?

Mr. McBee: We object to what the City Traffic Engineer may or may not have done.

Q. Is it normal practice for the City Traffic Engineer—

Mr. McBee: We object to what the normal practice is, may it please the Court. That is exactly the line of testimony Your Honor ruled on a moment ago.

The Court: Sustain the objection, except as to the Commissioners, and he has already answered that.

Q. Are there any published rules and regulations concerning the manner in which permits shall be applied for apart from the City Ordinance?

A. No, it is in the City Code.

Q. Approximately how many permits have you granted during the past—

Mr. McBee: We will object, may it please the Court. That continues to belabor this question of what has been done in the past and is not related to this case.

The Court: Sustain.

Mr. Greenberg: Your Honor, what I have said previously, may it be considered as an offer of proof along these lines?

The Court: I think so.

Mr. Greenberg: Thank you.

Cross examination.

By Mr. McBee:

Q. Mr. Hodges, may I ask a question: Have you attended the meetings of the City Commission regularly?

A. Yes.

Q. During the past thirty days, at any time in that interval of time, has anybody among these defendants or their attorneys or anybody representing them, appeared before the City Commission to request a permit to conduct a parade or procession?

A. They have not, no sir.

[fol. 351] Mr. McBee: You may come down.

(Witness excused.)

[fol. 352] The Court: There has been some question with reference to the docket sheet in particular with reference to the offer that the City made of the docket sheet. It is my understanding it was agreed—

Mr. McBee: Yes, Your Honor, takes judicial knowledge of it.

The Court: And as far as any entries made—I understand they are not through making entries on this sheet. Is there any objection to them going ahead and making the entries?

Mr. McBee: No, sir, because it was not really introduced. It was just called to Your Honor's attention.

COMMISSIONER EUGENE CONNOR, called as a witness, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mrs. Motley:

Q. Mr. Connor, would you please state your full name and position for the record?

A. Eugene Theo Connor.

Q. And your position, please?

A. Public Safety Commissioner of the City of Birmingham.

Q. Mr. Connor, do you know of any resolution by the City Commissioners of the City of Birmingham authorizing the bringing of this suit?

Mr. McBee: We would object to that, may it please the Court, whether this Commissioner knows about any resolution of the City Commission authorizing the bringing of this suit.

The Court: Sustain. The evidence by the person that has just taken the stand was that he was the Clerk and registered and had the minutes of all the meetings and of course the minutes would be the best evidence.

Mrs. Motley: We would like to have this marked, Your Honor.

(Whereupon a telegram was marked Respondent's Exhibit A for Identification.)

Q. Mr. Connor, I would like to show you this telegram which has been marked Respondent's Exhibit A for Identification and ask you if you can identify that telegram?

A. Yes, I can identify it.

[fol. 353] Q. What is it? Would you explain to the Court?

A. What do you mean what is it? It is a telegram.

Q. Excuse me. Is that a telegram sent by you to someone?

A. It is.

Q. Mr. Connor, when has the City Commission ever issued a permit for a parade?

Mr. McBee: We would object again, may it please the Court.

The Court: Sustain.

Mr. McBee: Getting into the same area that was attempted to be covered before.

Mrs. Motley: Would Your Honor like to see the contents of the telegram?

The Court: Yes.

Mr. McBee: We have no objection to the introduction of that telegram in evidence if that is what you have in mind.

The Court: The telegram speaks for itself as far as what it is. I don't assume you want to introduce the writing on it other than the printing?

Mrs. Motley: That's right. We want to introduce this in evidence.

(Whereupon said telegram was received in evidence as Respondents' Exhibit A, and a true and correct copy of the same is set out at the end of the transcript of testimony in this record.)

Mrs. Motley: Did Your Honor overrule the question to the witness as to when the City Commission had ever issued a permit for a parade?

The Court: No, I sustained the objection to that question.

Q. Mr. Connor, have you ever gotten a similar request for a parade permit?

Mr. McBee: We object to that, Your Honor, unless it is limited to some of the defendants under the same grounds Your Honor has already gone into.

The Court: Sustain.

Mrs. Motley: For the purposes of the record, Your [fol. 354] Honor, we would like to proffer by way of proof

the questions which we have directed to this witness for the purpose of establishing, as we said with respect to the prior witness, that the City Commission has never issued any permit. We would just like the record to be clear that this is the purpose of our questions and this is what we intended to prove by those questions.

The Court: Which City Commission?

Mrs. Motley: The City Commission of the City of Birmingham as indicated by this telegram. He directed, as Your Honor read, Mr. Shuttlesworth to secure such a permit from the City Commission, and what we had intended to prove by this witness is that the City Commission has never issued any such permit.

The Court: In this particular case?

Mrs. Motley: In any case in the City of Birmingham.

The Court: Your offer is accepted then as to what you offer to prove, but the Court says it is not relevant to this issue.

Mrs. Motley: Yes. I just wanted the record to be clear as to what we are trying to establish by this witness.

The Court: All right.

Q. Now, Mr. Connor, in this telegram to Mr. Shuttlesworth you stated the following:

"I insist that you and your people do not start any picketing on the streets in Birmingham, Alabama."

Now, is it your understanding that no picketing of any kind is permitted—

Mr. McBee: We object, may it please the Court.

The Court: Let her complete the question.

Mr. McBee: I thought she had.

Q. Is it your understanding that no picketing of any kind is permitted on the streets of the City of Birmingham?

Mr. McBee: We would object to that, may it please the Court, what his understanding may or may not be. The matter is a matter for the City Commission to pass upon

and what his individual opinion or judgment or whatever it might be would not be relevant and material since it is [fol. 355] an established fact according to the evidence up to this point that no one ever did submit any request to the City Commission.

The Court: Sustain.

Mrs. Motley: Your Honor, this City Commissioner advised or insisted that these people not do any picketing on the streets of the City of Birmingham. I think we have a right to find out what he meant by that statement, whether it is his understanding that no picketing of any kind is permitted on the streets of Birmingham.

Mr. Breckenridge: Your Honor, the preceding question clearly shows he has referred them to the City Commission. The previous sentence in that same telegram shows he referred them to the City Commission, and that could mean only one thing, that there would be no permit until a permit from the City Commission had been obtained.

Mrs. Motley: I don't think the telegram is clear on that at all, Your Honor, and I think we can ask him what he had in mind.

The Court: I will sustain the objection to the question. I think the question of picketing is a legal question and the question would have to come before the Court for determination. As to what this man may have had in mind would not be relevant to the issues that I am to pass on in this case. I don't have any evidence in this matter as yet of any picketing.

Mrs. Motley: We respectfully except to that ruling, Your Honor.

Those are all the questions to this witness.

Mr. McBee: That is all, Your Honor. No questions.

(Witness excused.)

CHIEF JAMIE MOORE, called as a witness, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Shores:

Q. Will you state your full name for the record?

A. Jamie Moore.

Q. What is your position with the City of Birmingham?

A. Chief of Police.

Q. How long have you been Chief of Police in the City of Birmingham?

[fol. 356] A. I was made acting Chief of Police about the 3rd or 4th of November, 1955, and Chief of Police by civil service examination around the 5th or 6th of May, 1956, and I have been that since.

Q. And were you employed as a law enforcement officer by the City prior to that time?

A. Since October 21, 1936.

Q. On or about April 17, 1963 did you receive a telegram from Rev. Shuttlesworth regarding a march or walk to the County Court House for the purpose of registering?

Mr. McBee: We would object to that, may it please the Court, inasmuch as Your Honor has restricted the trial of this particular portion of the case to the matters that relate to the original petition. That matter occurred, as I understand it, on April 17th, which was subsequent to the filing of the original petition and is dealt with in the amended petition but is not in the original petition at all.

The Court: I think it would be relevant here to the question of knowledge of these people as to a permit and the position they had with reference to getting a permit. I will overrule the objection. That had to do with April what?

Mr. Shores: April 17th.

A. I did get a telegram.

Mr. McBee: We would like to have an exception, may it please the Court. Will we be allowed an exception?

The Court: Wait a minute. April 17th? That had to do with an action that was taken subsequent to the filing of this original citation. I will have to sustain the objection to that.

Mr. Shores: Your Honor, we want to offer proof to show that these respondents tried in every respect to comply with the provisions requiring them to obtain permits and we would like for the record to show if this witness were allowed to testify and if we were permitted to introduce this testimony it would show that these respondents attempted to comply with all the rules and regulations necessary to obtain permits to walk the streets of Birmingham [fol. 357] as required by the City law.

The Court: I think the attempt to comply with the law after the violation of an injunction order which prohibited them from doing the very things they were seeking to get permission to do now would not be permissible in this case. I will have to sustain the objection on that.

Mr. Shores: We accept.

Q. Now, Chief, you had charge of maintaining law and order during these so-called demonstrations as police chief, did you not?

A. That's right.

Q. Would you say that during these demonstrations you did maintain law and order?

A. I think so as a whole.

Q. It was not necessary for you to call for any outside help from the State or from the Sheriff's office?

A. We have not called any outside help from the State or Sheriff's office.

Q. And during the so-called parades or processions or marches would you say your police officers maintained a

free flow of traffic except at times when they blocked and rerouted the traffic themselves?

A. I think there was some times when traffic wasn't flowing too free.

Q. But would you say generally your officials were able to route and direct traffic in a way that it didn't cause any unusual amount of inconvenience or disturbance or place individuals in position of being injured?

Mr. McBee: That, Your Honor, would call for an opinion of the witness.

Mr. Shores: I will withdraw that question, Your Honor.

Q. Did you attend any of these meetings at which these demonstrations proceeded from?

A. The meetings themselves?

Q. Yes.

A. I didn't go in except one occasion and that was, Your Honor, on—

[fol. 358] Mr. McBee: Wait a minute. We object to that because that it is not within the scope of this case.

Mr. Shores: Your Honor, we object. We don't know what he is going to say.

Mr. McBee: I know the occasion he went in. That was on the 17th and we would object to it.

The Court: He can state the date that that occasion was.

A. It was on Wednesday April 17, 1963.

Q. And at no time prior to that did you go on the inside?

A. I had never been inside one of them.

Q. Now, did you station yourself on the outside of where these meetings were being held at any time?

A. I didn't station myself at any particular place. I have been in and around several of them.

Q. Have you obtained the information that we requested with respect to the number of officers that were used?

Mr. McBee: We object to that. He never requested the Chief—you mean today? Excuse me. I understand there has been a request.

A. Your Honor, that came up yesterday, and I told counsel I would have it here about 3:00 or 3:30 and I am sure it will be here. It is not here yet. I do not have it myself.

Q. But it is on the way you think?

A. Well, it should be here about 3:00 or 3:30.

Mr. Shores: That is all.

Mr. McBee: No questions.

The Witness: May I say something, Judge?

[fol. 359] The Court: The only thing I can ask you is if you want to change your answer in any way?

The Witness: There is no change in the answer. The attorney asked me if we called in any outside help. We did not call in any outside help.

Mr. Shores: That is what we understood you to say.

(Witness excused.)

Mr. Shores: We would like to call Mrs. Denney.

MRS. UNA DENNEY, called as a witness, being duly sworn, was examined and testified as follows:

#### Direct examination.

By Mr. Shores:

Q. Will you state your full name for the record?

A. Mrs. Una Denney.

Q. By whom are you employed?

A. Britts.

Q. In what capacity are you employed at Britts?

A. I am the restaurant manager.

Q. Is Britts the same as Newberrys, or a subsidiary of Newberrys?

A. Yes, sir.

Q. It is? Mrs. Denney, do you serve Negroes there at your lunch counter?

Mr. McBee: Object to that as to whether she does or does not serve Negroes.

The Court: I don't know that this witness has any testimony whatever that would be in rebuttal or would be in conflict with that offered by the City when the City made out its main case. I don't want to have to go to any other issues that may exist outside of the scope of this particular hearing.

Mr. Shores: Your Honor, they are accused of violating certain terms of your injunction, and one of those provisions was that they were not to engage in any so-called sit-ins or kneel-ins and various other things.

[fol. 360] The Court: I will say this. There has been no evidence of any kneel-ins or sit-ins that any of the defendants have been in. If I am incorrect—

Mr. McBee: No, sir, you are correct.

The Court: The only charge has been this particular parade, the one on Easter Sunday and the one on Good Friday, and on the question of the meeting at which time some press release was issued. Am I correct in that?

Mr. McBee: Essentially that is correct.

The Court: I don't know of any other evidence or any other occasions other than those, and I see no need of putting on testimony to rebut something where there has been no proof along that line.

Mr. Greenberg: The purpose of this testimony is to support that allegation in the complaint to show that the purpose of this movement was to protest against illegal racial discrimination. This is essentially free speech and our defense, I think it would be incumbent upon the respondents to show that they were acting for a lawful purpose. Through this witness we had proposed to prove that this witness was instructed to obey those ordinances of the City of Birmingham which are unconstitutional.

The Court: That may be relevant at a later time on the question of the injunction, but at this time on the questions

of contempt, there has been no contempt proved except this that I have related.

Mr. Greenberg: We would most respectfully disagree with that, because we feel that if the injunction itself were granted unconstitutionally then no penalty can be inflicted for disobedience to it.

The Court: I take a different view of it. Any further questions from this witness other than on that phase?

Mr. Shores: No further questions, Your Honor.

Mr. McBee: No questions.

(Witness excused.)

[fol. 361] Mr. Shores: Your Honor, we had planned to call the managers of Loveman's Tea Room, Woolworth's, Kress's, H. L. Green and Sears, and the proffer that was offered by this witness would be the same as offered in those cases.

The Court: All right.

Mr. Shores: You might excuse them.

The Court: If you have them here you can excuse them. The Court's ruling would be the same with reference to them.

Miss Motley: The next witness would be Abraham Wood, who was one of the respondents dismissed this morning, for the purpose of showing that the Alabama Christian Movement for Human Rights is an organization seeking to eliminate segregation in the City of Birmingham through constitutionally protected activity such as free speech and picketing. We anticipate that when we put this witness on that the City will make the objection which was just made to the testimony of the last witness, and in that case we would like the record to show that by Abraham Wood we would intend to prove or would prove that there is extensive segregation in the City of Birmingham and that the Alabama Christian Movement for Human Rights is an organization seeking to eliminate that segregation through peaceful protests against that policy on the part of the City officials.

The Court: Do you want to take any issue with reference to that as far as this hearing is concerned? Or do you want to let it stand, her offer?

Mr. McBee: I don't think it is relevant to this hearing at all. The primary issue is whether or not there has been a violation of the injunction.

The Court: You make your objection on that ground?

Mr. McBee: Was that an offer of proof?

Miss Motley: Yes, sir.

Mr. McBee: We would object to such proof being introduced in evidence because it is irrelevant in this proceeding and sheds no light on the guilt or innocence of any of these [fol. 362] defendants insofar as the contempt proceeding is concerned.

The Court: The Court will sustain the objection on the same basis as the other offer.

Miss Motley: T. L. Fisher.

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T. L. FISHER, called as a witness, being duly sworn, was examined and testified as follows:

Direct examination.

By Miss Motley:

Q. Mr. Fisher, would you please state your full name?

A. Theodis L. Fisher.

Q. Mr. Fisher, you are one of the defendants in this case brought by the City and are one of the respondents in the Court's order to show cause, are you not?

A. That's right.

Q. Now, Mr. Fisher, were you ever served with a copy of an injunction order of this Court?

A. Never was.

Q. Now, Mr. Fisher, were you ever served with the contempt citation issued by this Court?

A. In the City jail I was.

Q. When were you arrested?

A. I was arrested on Easter Sunday of this year.

Q. When were you served with the contempt citation?

A. That was on a Monday or Tuesday. I can't remember what day.

Q. But it was after you were in jail?

A. It was after I was in jail, that's right.

Miss Motley: Those are all the questions for this witness, Your Honor.

[fol. 363] Cross examination.

By Mr. McBee:

Q. What is your official occupation?

A. Minister of the gospel, pastor Mt. Hebron Baptist Church, East Thomas, Birmingham.

Q. Minister of the Mt. Hebron Baptist Church?

A. That's right.

Q. You came down to the church on 11th Street and 6th Avenue on Easter Sunday, did you not?

A. That's right.

Q. How did you happen to go down to that particular place that day?

A. How did I happen to go?

Q. Yes.

A. Well, I went in my automobile, just went to the service.

Q. No, but what brought you down there?

A. Well, they were having a service there.

Q. Having services?

A. That's right.

Q. Had you heard about the fact that they were going to have an Easter march?

A. I heard they were going to walk on Easter.

Q. Going to walk?

A. Right.

Q. Where did you hear that?

A. I didn't hear that from any particular source, just heard it.

Q. Well, I understand, but did you read it in the paper, hear it on the radio, somebody tell you, or how did you hear it?

A. I just heard the day they were going to walk.

Q. Heard they were going to walk, all right. Did you hear where they were going to walk to?

A. They didn't say a particular designation that they were going to.

Q. All right, you say you don't recall whether you saw [fol. 364] that in the newspaper, whether somebody told you, whether you heard it on the radio, or how you got the information; you have no idea?

A. That's right.

Q. All right. Are you familiar with the movement that is known and referred to as the Alabama Christian Movement for Human Rights?

A. Very much so.

Q. Very much so? Are you a member of that organization?

A. That's right.

Q. How long have you been a member?

Mr. Greenberg: May we have an objection, Your Honor? This witness on direct examination was asked just the simple question had he been served, and this is going very far afield from the direct examination.

The Court: This is, of course, cross examination and he has denied the fact that he had been served. This would be admissible on the question of whether or not he had notice. Overrule the objection.

Q. How long have you been a member of the Alabama Movement that we have just described?

A. Approximately four years.

Q. Did you attend any meetings during the period of

time intervening between the 10th of April and the 14th of April?

A. Sure.

Q. Which of those meetings did you attend?

A. I attended Good Friday's meeting.

Q. You attended Good Friday's meeting, which would be on Friday night?

A. That's right.

Q. Did you attend the Saturday night meeting?

A. Yes, I attended the Saturday night meeting.

Q. You attended the Saturday night meeting, all right. At the Saturday night meeting did they call for volunteers? [fol. 365] A. At the Saturday night meeting did they call for volunteers for what?

Q. Call for volunteers? Call for somebody that wanted to go to jail, to volunteer to go to jail?

A. They didn't call for volunteers to go to jail. They called for volunteers to walk.

Q. Oh, they didn't call for volunteers to go to jail, but they called for volunteers to walk?

A. That's right.

Q. When are we going to walk; the next day?

A. On Sunday.

Q. Who was it that made that call for volunteers?

A. I don't remember right offhand who made that appeal.

Q. You don't remember who made that appeal?

A. Right offhand I don't.

Q. All right. Now on this occasion did somebody say something about we are not getting enough newspaper publicity?

A. My recollection, I cannot certify to that fact.

Q. You don't remember that. Don't you recall that they asked for volunteers to call all of the Negroes in the community and get them to come out the next day?

A. Come to the meeting, I remember that.

Q. They said we want volunteers to call everybody to come out?

A. I remember that being said, but I don't remember who said it.

Q. But that was said there that night, and that was on Saturday night, the 13th, before Easter?

A. That's right.

Q. How many volunteers did they get to walk?

A. I don't remember that exact figure.

Q. They got several, though, didn't they?

A. Had several, but I don't remember that exact figure.

Q. Well, how many figures did they get to do the calling?  
[fol. 366] A. I don't remember that exact figure.

Q. Had a number, though, didn't they?

A. They had a number, but I don't remember the exact figure.

Q. Was it a large number or just two or three?

A. I would not elaborate on the number, I don't know.

Q. You don't know the exact number, but you would be able to estimate that that was a good size group that said they were going to do it?

A. I don't remember the figure.

Q. You just don't remember? Your recollection is cut off on that subject?

A. That's right.

Q. All right, did they have a big crowd down there that Easter Sunday?

A. At the meeting they did.

Q. Yes, and they had a great big crowd outside, too, didn't they?

A. I was on the inside.

Q. But you came outside, didn't you?

A. When we began to walk I came outside.

Q. And you did walk?

A. I did walk.

Q. And you were arrested?

A. I was arrested for walking.

Q. And you were examined by the officer, too, weren't you?

A. That is correct.

Q. And you told the officer that you knew about the injunction, you heard about it before this walk?

A. I was examined by a detective.

Q. I mean a detective.

A. That's right.

Q. And you told him you had walked and that you knew about the injunction when you walked?

A. No, I didn't tell him that. I said I had heard about an [fol. 367] injunction.

Q. All right, you had heard about an injunction?

A. That's right.

Q. Where did you hear about the injunction?

A. I told the detective that I didn't hear it from any particular source, that I just heard about an injunction in the air.

Q. About an injunction just up in the air?

A. That's right.

Q. Were you there on the Thursday night, the 11th of April, at the meeting?

A. I was trying to recall.

Q. Let me refresh your memory by some of the things that went on there and see if you remember. Were you present at the press conference when Rev. Wyatt Tee Walker brought in the written paper that was handed to the members of the press?

A. No.

Q. Did you hear about that occasion?

A. I didn't hear about that occasion.

Q. You didn't hear about it at all?

A. Just from you today.

Q. How is that?

A. Just from you today.

Q. From me today is the first time?

A. That's right.

Q. Were you there on an occasion when Rev. Martin Luther King, Jr. made a statement?

A. Made a statement?

Q. Yes, about an injunction?

A. I don't recall Martin Luther King making a statement about an injunction.

Q. How many times have you heard Martin Luther King make a speech?

[fol. 368] A. Many times before; not about an injunction.

Q. I am talking about this period of time, the 10th of April on this Wednesday night. You say you were present—

A. To my understanding the injunction was issued from what you say this afternoon on a Wednesday, is that right?

Q. You understand it was issued on a Wednesday?

A. I understand from you this afternoon, from the discussion I have heard in this courtroom today.

Q. All right, you have heard discussion in the courtroom today?

A. That's right.

Q. When did you hear Martin Luther King, speak?

A. I didn't hear him speak prior to Wednesday.

Q. Have you heard him since Wednesday?

A. No.

Q. Have you seen him since Wednesday?

A. Since I saw him this morning and yesterday.

Q. I don't mean today or yesterday. I mean have you seen him in this period of time we have been talking about?

A. Not since then.

Q. You haven't seen him at all?

A. That's right.

Q. What did you hear about the injunction? What did they tell you about it?

A. I only heard about the injunction. It wasn't interpreted to me.

Q. Was it interpreted to you you would probably have to go to jail if you took part in that march or walk?

A. Yes, but I didn't see any reason I would have to go.

Q. I understand, but you were not told if you got in that march you would have to go to jail?

A. I was told if I walked on the streets of Birmingham I would have to go to jail.

Q. I am talking about this Easter Sunday procession. That is what they were talking about?

[fol. 369] A. That's right.

Q. And you were told that you would go to jail if you did, or probably would?

A. I was never told that.

Q. You understood you would?

A. Not for just walking on the streets of Birmingham.

Q. You mean for walking in this procession you didn't understand you would be arrested?

A. I didn't understand I would be arrested for walking.

Q. You didn't understand you would be arrested for walking?

A. I can't understand it yet.

Q. You didn't understand it then and you don't understand it now?

A. That's right.

Q. All right, did anybody say anything to you about who was included in the injunction?

A. After I was confined and after the contempt I read it.

Q. You have read the contempt?

A. That's right, but I haven't read the injunction yet.

Q. When did you hear about the injunction?

A. When did I hear about the injunction?

Q. Yes, not the contempt but the injunction?

A. I think I told the detective that interviewed me that I heard about an injunction, about an injunction, not any particular injunction.

Q. At this meeting on the 13th didn't they call for volunteers to go to jail or some who were willing to go to jail?

Mr. Greenberg: Object. This is becoming repetitious.

The Court: Sustained. I think that is repetitious.

Mr. McBee: Well, if it is, I don't want to ask it.

Q. Now, on this Saturday night meeting was Shuttlesworth there, Rev. Shuttlesworth?

A. On Friday night?

Q. No, Saturday night?

[fol. 370] A. I do not remember seeing Shuttlesworth.

Q. Was Rev. Martin Luther King, Jr. there?

A. You just said he was arrested Friday, so he wouldn't have been there.

Q. Was Rev. Wyatt Tee Walker there?

A. Rev. Wyatt Tee Walker?

Q. Yes.

A. I remember seeing him, and that is all I remember, is just seeing him.

Q. You do remember seeing him at the meeting?

A. At the meeting, that's right, not in the pulpit.

Q. But he was there?

A. That's right.

Q. Who were the two speakers that night?

A. Well, I remember Rev. Hayes giving a message. That's all he did, just a gospel message.

Q. And that is all the speaking you had?

A. That's all I remember about that Saturday.

Q. You don't recall who was asking for these volunteers?

A. Volunteers to do what?

Q. Volunteers to walk, as you put it awhile ago; volunteers to call on the community.

A. I don't remember who made that appeal.

Mr. McBee: All right, that is all.

The Court: Anything further?

Mr. McBee: I would like to ask him this.

Q. You read the newspapers, do you not?

A. How is that?

Q. You read the newspapers, do you not?

A. Every now and then, I read newspapers.

Q. And you listen to the radio?

A. I read newspapers but I didn't read nothing about contempt.

Q. Didn't read anything about the injunction?

A. No.

[fol. 371] Q. Never have in your life?

A. Never have.

Mr. McBee: All right.

Mr. Greenberg: That is all.

(Witness excused.)

(Whereupon, at the hour of 3 P.M. Tuesday, April 23, 1963 a recess was had until 3:15 P.M. when the proceedings continued as follows:)

[fol. 372] NELSON HENRY SMITH, JR., called as a witness, being duly affirmed, was examined and testified as follows:

Direct examination.

By Miss Motley:

Q. Rev. Smith, would you please state your full name for the record?

A. Nelson Henry Smith, Jr.

Q. What is your occupation, Rev. Smith?

A. Minister, New Pilgrim Baptist Church, 903 6th Avenue, South.

Q. And that is here in the City of Birmingham?

A. That's right.

Q. Rev. Smith, you are one of the defendants in the suit brought by the City, and one of the respondents in the citation to show cause issued by this Court, are you not?

A. I am.

Q. Rev. Smith, did you ever receive or have handed to you a copy of the injunction issued by this Court?

Mr. McBee: We would object to that, may it please the Court, if this testimony is being offered to contradict the return of the Sheriff's office, which is presumed to be correct, and this is not the correct way to challenge the return. I am fairly sure that it does show—

The Court: I think that would be one of the elements of notice. I will overrule.

A. Will you ask your question again?

Miss Motley: Would the Reporter please read the questions?

(Whereupon the Court Reporter read the last above recorded question.)

A. I did.

Q. When was that?

A. The Monday morning after Easter, in the City Jail.

Q. When were you arrested?

A. Easter Sunday afternoon.

Q. And the next morning you were handed a copy of the injunction issued by this Court?

[fol. 373] A. That is correct.

Q. Now, were you ever served with a copy of the order of this Court to show cause?

A. The following day.

Q. That would be Tuesday after you were arrested?

A. The day after I received the copy of the injunction.

Q. That would be Tuesday, then, right?

A. That's right.

Miss Motley: That is all the questions I have.

The Court: All right.

Cross examination.

By Mr. McBee:

Q. All right, were you in the march, or walk, or whatever you would choose to call it, that occurred on Easter Sunday?

A. Yes, I was walking.

Q. Did you go to the Church at 6th Avenue and 11th Street, South— No, 7th Avenue and 11th Street, South on Easter Sunday?

A. I did.

Q. How did you happen to go down there?

A. Well, everybody was going, and I joined in.

Q. Everybody was going, and you joined the procession. Do you know what caused everybody to go?

Miss Motley: Excuse me, Your Honor. I think the witness ought to be able to answer the question, and not the lawyer.

The Court: Give him an opportunity to complete his answers, Mr. McBee.

Q. Did you want to answer anything else besides everybody was going and you went, too?

A. That is the answer.

Q. That is true? Do you know what the occasion was to bring them all out?

A. Just an Easter service, the way I received the information.

Q. Just an Easter service, and there was nothing special to occur that you ever knew about different from any [fol. 374] Easter service you have been going to during the time you have been a minister, or been a member of a church? Is that what you understand—I mean you want the Court to understand?

A. I went to the Easter service.

Q. All right, did you attend any of the meetings of the Alabama Christian Movement for Human Rights?

A. I did.

Q. Did you attend any of those meetings subsequent to the 10th of April?

A. Some of them.

Q. Did you attend the meeting of the 11th of April, which was on the night of the 11th of April?

A. I don't recall. I attended most of the meetings.

Q. Attended most of the meetings. Do you remember any that you missed during that particular week?

A. Well, I was in and out.

Q. Just in and out, you say, of the meetings?

A. That's right.

Q. Do you know Rev. Abernathy?

A. I do.

Q. Is he an officer of the Southern Christian Leadership Conference?

A. He is.

Q. Did you—were you in attendance upon a meeting that occurred on the 13th of April, the night before the Easter walk?

A. Yes, I was at that meeting.

Q. You were there? All right, was anything said about some volunteers at that meeting?

A. I don't recall. I don't recall anything said about volunteers.

Q. To refresh your mind, didn't—wasn't a call made for volunteers?

A. There might have been. I don't know. I, perhaps, was in the office at that time counting money.

Q. Oh, you were one of the money counters. Are you the [fol. 375] Treasurer?

A. Secretary.

Q. Secretary of what?

A. The Alabama Christian Movement for Human Rights.

Q. You are a member, then?

A. I helped organize it.

Q. I see, you are one of the organizers, charter members?

A. That's right.

Q. How long have you been a member?

A. Seven years, June 5th of this year.

Q. Now, when you were interviewed by the detective in the City Jail, you told the City Detective that you knew about or had heard about the injunction, did you not?

A. I told him I heard about an injunction, yes.

Q. You did tell him that you had heard about one, then, had you?

A. I have heard about an injunction.

Q. Yes. All right, do you remember who told you about it?

A. No, I do not.

Q. Do you remember who—how you heard about it, whether you heard about it, or saw it, or heard it, or what?

A. Well, I glimpsed it one day in the paper.

Q. Glimpsed it one day in the paper?

A. And I heard it once on the radio.

Q. Now, when you went down to the Church on that day—by the way, did you hear them on that Saturday night calling for volunteers to call all the neighborhood and get them out, all the colored community?

A. I don't recall.

Q. You don't remember that?

A. I don't recall.

Q. But, you did hear, though, all were going, and you joined in?

A. That was on Sunday, yes.

Q. On Sunday. Now, does your Church—do you have a congregation?

[fol. 376] A. Yes, I do.

Q. Now, what time did you go down to this Church on Easter Sunday?

A. I go—I got there about 4:00 o'clock.

Q. Now, that is not your Church?

A. No, it is not.

Q. Now, did you have an Easter service at your Church?

A. I did.

Q. Regular Easter service?

A. Yes sir.

Q. Did they have a regular Easter service down at the Church you went to? By the way, what is the name of that Church?

A. Which Church?

Q. The one you went to on Easter Sunday afternoon.

A. Thurgood C. M. E. Church.

Q. Did they have regular services, so far as you know, that morning?

A. I don't know what they had before I got there.

Q. All right, when you got there, then you went into the service?

A. I did.

Q. And did anybody talk about volunteering to march, or anybody give instructions to march, or what you were going to do when you got inside?

A. No.

Q. Did you have on a robe?

A. I did.

Q. Who else had on robes?

A. There was three of us with robes on, and there was more than three ministers, but I don't recall now just who the three were.

Q. You remember three with robes, and there were some more ministers?

A. That's right.

Q. Did you have advance notice you were going to walk before you went down there that day?

[fol. 377] A. I decided after I got there.

Q. You decided after you got there, uh huh. All right, now, where did you leave from when you went there?

A. I don't understand your question.

Q. I say where did you leave from when you went down to the Thurgood C.M.E. Church?

A. I left the Church where I am the minister.

Q. You left the Church where you are the minister?

A. That's right.

Q. And you left there at what time, 3:00 o'clock?

A. I left there something to four.

Q. Something to four, all right. Had you been holding a service that afternoon?

A. You mean at our Church?

Q. At your Church.

A. An Easter program for Children.

Q. When did you get concluded with the Easter program?

A. I left before they finished.

[fol. 378] Q. You left before they got through, all right, and you took your robe with you?

A. I always keep it, usually, in my car on Sunday.

Q. You just keep it for all general purposes?

A. On Sunday.

Q. I say on Sunday?

A. That's right.

Q. But, you had no idea you were going to be called on to put on a robe when you got down to the Thurgood CME Church?

A. Usually I go in the pulpit with the robe on.

Q. Do you always go in the pulpit of the Thurgood CME Church when you attend that church?

A. I go in the pulpit of any church I attend.

Q. Always, you go in the pulpit?

A. Always. Always.

Q. Now, who was it suggested to you that day that you have a parade, or you have a walk?

A. I don't recall any particular person.

Q. Who was there that seemed to be in charge besides you?

A. Well, I couldn't—there was countless. There was numbers of people there.

Q. Well, the preachers that were in charge of the affair. Was Wyatt Tee Walker there, Rev. Wyatt Tee Walker?

A. I think I saw him.

Q. You saw him?

A. Yes.

Q. Did you ever ask anybody what this injunction was all about that you heard about on the radio and saw in the paper?

A. No, I did not.

Q. You made no effort to acquire any knowledge or information concerning it?

A. No, I did not.

Q. Did you understand from what you read in there that the Alabama Christian Movement for Human Rights was enjoined?

[fol. 379] A. No, I did not.

Q. Who did you understand was enjoined?

A. Well, all I heard was Martin King, and Ralph had been enjoined.

Q. Martin King, and Ralph, and nobody else?

A. I mean, this is what was played up.

Q. And did you hear anything about Rev. Shuttlesworth being included in the injunction?

A. I think I recall that.

Q. Yes, you recall that. Rev. Shuttlesworth is president of your organization, is he not?

A. This is true.

Q. Did you ask Rev. Shuttlesworth what the injunction was all about?

A. No, I did not.

Q. You made no effort to ascertain what it was about?

A. No.

Q. When did you read it in the paper?

A. The morning I was served. This is when I read it in the paper.

Q. Well, now, you were reading the paper in jail?

A. I had copies of the paper.

Q. And when did you hear about it on the radio?

A. Oh, I don't know. Maybe Saturday.

Q. Anyway, it was prior to the walk or march on Sunday?

A. Yes.

Q. Now, you tell us that nobody organized that walk, or march in the church that day?

A. I don't recall any particular person being in charge.

Q. Well, any particular person, or any group in general. Who were the general group in charge of it?

A. There was no general group as such in charge.

Q. Well, Rev. Hays was there, wasn't he?

A. What do you mean, at the service?

Q. Wasn't he in this walk, too?

[fol. 380] A. He walked along with us.

Q. And Rev. A. D. King?

A. He walked along with us.

Q. Now, Rev. A. D. King, and Rev. A. D. William King, we are talking about the same man, are we not?

A. That's right.

Q. He walked along with you. Now, who told who to get in front, and who to get in behind?

A. Nobody told anyone anything.

Q. It just happened spontaneously in the church? Did all the entire congregation join in, or just a certain group walk?

A. We walked out.

Q. I understand, but were you one of the two leaders? I mean the very front leaders? I am talking about the very front of the march, or the walk.

A. I was not in front.

Q. You were immediately behind those who were in front?

A. Three or four columns, perhaps, back.

Q. Three or four columns behind. How many people in that church joined in that maneuver?

A. Hundreds just joined in the walk.

Q. You mean that came out of the church?

A. Yes. Everybody joined.

Q. Everybody in the church joined in it, and you say there were hundreds in the church?

A. I would say five or six hundred.

Q. Five or six hundred in the church. Did anybody join in it from the outside after you got outside?

A. Well, everybody was just going walking in the same direction.

Q. Everybody was going in the same direction. Now, you knew that everybody was going to walk in the same direction, because that had been agreed upon, had it not?

Mr. Shores: We object to his arguing.

The Court: Objection overruled.

[fol. 381] Q. I said you knew everybody was going to walk in the same direction, because that had been agreed upon in advance, had it not?

A. No, I did not know this.

Q. Didn't you know Rev. Wyatt Tee Walker had come out and told the group, or the mob and the crowd that they would come out and join with the marchers?

A. No, I didn't hear that.

Q. Wyatt Tee Walker did go out and talk to the group, didn't he?

A. Which group?

Q. The one outside, not in the church, outside.

A. He didn't talk to me.

Q. You were inside.

A. I don't know what took place outside.

Q. He did go somewhere outside, though, didn't he?

A. I do not know whether he went outside, or not.

Q. In other words, you can't say yes or no?

A. I do not know whether he went outside.

Q. That is what I understand, you do not know, yes or no. You couldn't say either way, so far as your personal knowledge is concerned?

A. That is true.

Q. Now, where was the march headed for, or the walk, as you say?

A. I was not informed.

Q. Nobody told you where you were going?

A. No.

Q. Who were the leaders in it? I mean the front rank ones, the two that were in the very front?

A. Well, I do not know this—

Q. You were there.

A. —because we were crossed up with photographers, and people running in between, so I couldn't see who was in front.

[fol. 382] Q. Well, when you left the church, when you came out of the church, you came out in an orderly group at that time, didn't you, two by two?

A. No, sir. No, sir.

Q. Well, when you came out of the church, who was leading it then?

A. I don't recall who was in front.

Q. Well, was it somebody with a robe on, or two somebods with robes on?

A. Yes.

Q. Do you know whether A. D. King was one of them?

A. He could have been.

Q. He could have been. Now, you have been a member, you say, of this movement a long time?

A. That is correct.

Q. Now, one of the tenets of this movement is, and one of the philosophies of Rev. Martin Luther King is we want to create tension, is that not right?

Mr. Greenberg: Objection.

The Court: Sustained.

Mr. McBee: We except, and offer to show if we were permitted to do so that that is the avowed and specifically stated purpose and philosophy of the movement as enunciated by Rev. Martin Luther King, Jr.

Q. Now, it is also your policy, and your purpose, and your goal if you don't get what you want in another way, you set about doing it by revolution, is it not?

Mr. Greenberg: I object.

The Court: Objection overruled.

A. I don't—I do not know.

Q. You don't know, but you are secretary of it, and you are one of the charter members and organizers of it?

A. This is true.

Q. Now, is Rev. Wyatt Tee Walker, is he authorized to [fol. 383] speak for this movement that you are a member of and secretary of?

Mr. Greenberg: We object. Again, this is getting far afield.

The Court: Objection overruled.

A. I do not know anything about him being authorized to speak for the group.

Q. You don't know whether he was authorized to issue a press release on the 11th of April?

A. No, I do not.

Q. Is Rev. Martin Luther King one of the spokesmen for this group?

A. For which movement?

Q. For the movement that you are part of.

A. He is one of our leaders.

Q. One of your leaders. Is Rev. Wyatt Tee Walker one of your leaders, too?

A. Not in the sense in which you—that he is leading anybody. He is assistant to Dr. King.

Q. I am talking about in your movement Rev. Shuttlesworth is the leader?

A. That is correct.

Q. And you are one of the leaders, because you are the secretary?

A. That is correct.

Q. In that same sense, Rev. Wyatt Tee Walker is a leader, too, of the movement, is he not, in that he is assistant, or helper to the Rev. Dr. Martin Luther King, Jr.?

A. That is correct.

Q. Rev. Abernathy, also, is he not?

A. This is true.

Q. All right. Now, the Board of Directors—do you have a Board of Directors of the Alabama Christian Movement for Human Rights?

Mr. Greenberg: May we renew our objection?

Mr. McBee: Preliminary question. I am going to follow that up, Your Honor.

The Court: Wait just a minute. Objection overruled.

Q. Go ahead. You may answer the question.

[fol. 384] A. There is a voluntary group that work in an executive way.

Q. Well, I understand, but are they elected by somebody?

A. By the people.

Q.. Where do they get their job?

A. By the people.

Q. Elected by the members of the movement?

A. This is true.

Q. And you are a member of the Board of Directors?

A. Yes, I am.

Q. How many other Board of Directors do you have?

A. I do not recall. Some have moved away. I do not have the exact number now.

Q. But, Rev. Shuttlesworth is a member of that Board of Directors, is he not?

A. He is the president of the organization.

Q. And also a member of the Board of Directors?

A. Yes.

Q. All right, did you all have a meeting of the Board of Directors after this injunction was issued?

A. No, we have not.

Q. You have had no meeting at all?

A. None whatsoever.

Q. You had no meeting to decide on whether you were going to walk, or march, or what you were going to do?

A. No, we did not.

Q. You have had no meeting since the 10th of April?

A. No, we haven't.

Mr. McBee: That is all. I might ask him this: Who are the other officers of this organization, the Alabama Christian Movement for Human Rights?

A. Who are the officers?

Q. You are secretary, Rev. Shuttlesworth president, and who are the other officers?

A. Rev. Woods.

{fol. 385} Q. What is his capacity, what position?

A. He is one of the vice presidents.

Q. One of the vice presidents. Is that Calvin Woods, or the other?

A. Abraham.

Q. Abraham. All right. That is Abraham, Jr., I believe.

A. And Bill Shortridge is the treasurer.

Q. W. E. Shortridge?

A. Yes.

Q. Is Ed. Gardner an officer?

A. First vice president.

Mr. McBee: He is first vice president. I see. That is all.

Redirect examination.

By Mrs. Motley:

Q. Rev. Smith, what is the purpose of the Alabama Christian Movement for Human Rights?

A. To fight segregation.

Mr. McBee: We object to that, Your Honor. Your Honor wouldn't let me go into this. You stopped me when I was going into it. I believe I asked that very question.

The Court: What is your purpose?

Mrs. Motley: Your Honor permitted this man to ask him wasn't the purpose revolution.

Mr. McBee: No, Your Honor wouldn't let me ask it.

Mr. Greenberg: It was objected to, and overruled. You asked it.

Mr. McBee: That is all right, if I did. I am sorry. I misunderstood.

The Court: The objection has been withdrawn. You may ask the question.

Q. What is the purpose of the Alabama Christian Movement for Human Rights?

A. The purpose of the Alabama Christian Movement for Human Rights is to fight segregation in all forms in the City of Birmingham by legal means, peaceful protests, the courts, and all of this in non-

[fol. 386]

Recross examination.

By Mr. McBee:

Q. All right, let me ask you a question: now, you say that you want to fight in a peaceful way and in the courts. Now, is it correct that your—that the leaders of your movement, including Rev. F. L. Shuttlesworth, has stated publicly that they did not intend to obey the order of this court in this case?

Mr. Greenberg: Objection.

The Court: Objection overruled.

A. I have not heard such a statement from any of them.

Q. You have never heard any such statement? Now, you state, though, he is one of the leaders of this movement?

A. This is true.

Q. Would he be speaking for the movement if he made such a statement?

Mr. Greenberg: I object, hypothetical question.

The Court: Sustained.

Q. Have you ever authorized him to make such a statement for the movement?

Mr. Greenberg: Objection, no showing he has authority.

The Court: Objection overruled.

A. Have I authorized him?

Q. Or any other members of the movement authorized him to make such a statement?

A. Not to my knowledge.

Q. Have you disavowed, or heard anybody disavow his right to make that statement?

A. No, I have not.

Q. You never heard anything like that at all?

A. No, I haven't.

Q. Now, I will ask you this: if as late as last night were you attending a meeting last night?

A. I arrived late.

Q. You arrived late. Did you hear Rev. Abernathy talk?

A. No, I did not.

Q. He had already talked when you got there?

[fol. 387] A. He had already spoken.

Q. Do you know what he said?

A. No, I do not.

Q. You have no idea?

A. No, I do not.

Q. You didn't hear him say that he didn't give a damn what the court wrote in this injunction, that they were going to carry on just like they had always carried on?

Mr. Greenberg: Objection. The witness has already testified he did not hear him speak.

The Court: Sustain.

Mr. McBee: We except.

Q. Did you hear anybody state at that meeting that he had said that?

A. No, I did not.

Mr. Greenberg: Object, calls for hearsay.

The Court: Sustained.

Mr. McBee: Exception.

Q. Now, if you were informed that Rev. Shuttlesworth had made a statement to the effect that it was the intention of Rev. Shuttlesworth and of the Movement for Human Rights to violate the injunction issued by this court, would you subscribe to that statement as being a correct statement of the Movement for Christian Rights?

Mr. Greenberg: Objection, hypothetical, if you heard, would you say.

The Court: Objection overruled.

Q. Do you subscribe to this viewpoint?

The Court: I will overrule the objection.

A. I don't know.

Q. Do you subscribe to the viewpoint that that is a correct position?

Mr. Greenberg: I object. What position? Could counsel please restate the question?

The Court: Let's read the question back again.

(Whereupon, the Court Reporter read the last three above [fol. 388] propounded questions.)

A. I cannot answer that in advance.

Q. All right, does that state your position?

A. What states my position?

Q. That you intend to violate the injunction regardless of whether it is issued, or not issued, or dissolved, or not dissolved?

A. No.

Q. Then, your position is that the court's injunction should be obeyed until it is declared to be invalid, is that correct?

Mr. Greenberg: Objection. This calls for a legal conclusion of this witness.

The Court: I think it would be pertinent to the Court's position to know how this witness stands on future violations, so I will overrule the objection.

Mr. Greenberg: It is really what constitutes a violation. In some instances the witness would have to consult counsel.

Mr. McBee: I think he should consult His Honor if he is undecided about that.

The Court: I think it is—

Mrs. Motley: I think the question ought to be made clear to the witness as to whether he would violate an injunction which was known to him to be legal, or whether he would violate an injunction which he would consider unconstitutional.

Mr. McBee: That is just the point.

The Court: I think the purpose of this whole hearing is to determine whether or not the Court has authority to issue an injunction.

Mrs. Motley: That is the point, Your Honor. I think it is a legal question. This man wouldn't know that. He wouldn't know whether he could violate that injunction. He would have to consult his lawyer.

The Court: Well, with those objections made into the record, I will allow him to answer the question.

A. I would follow the advice of counsel.

[fol. 389] Q. All right, have you been advised by counsel in this case?

A. In this particular case?

Q. Yes.

A. No, I have not.

Q. You consulted no counsel?

A. Relative to this?

Q. Relative to what you got arrested for.

A. No. I just asked them to explain it to me. That is all.

Q. Explain what?

A. Well, what was I being brought here for.

Q. When did you ask them that?

A. Monday morning, yesterday morning.

Q. That was after the case started, or when the case was started?

A. Just before it started.

Q. I see. Now, beyond that, you sought no legal counsel?

A. No, I did not.

Q. No advice?

A. No.

Mr. McBee: All right, that is all.

Mrs. Motley: That is all, Your Honor.

(Witness excused.)

The Court: Who will you have as your next witness?

Mrs. Motley: James Bevel.

JAMES BEVEL, called as a witness, being duly sworn, was examined and testified as follows:

Direct examination.

By Mrs. Motley:

Q. Mr. Bevel, would you state your full name for the record?

A. James Luther Bevel.

Q. Is there an "s" on the end of your name?

A. No, B-e-v-e-l.

Q. Mr. Bevel, were you ever served with a copy of the injunction order issued by this Court?

[fol. 390] A. No.

Q. Mr. Bevel, were you ever served with a copy of the Order to Show Cause issued by this Court?

A. No.

Mrs. Motley: Those are all the questions, Your Honor.

Cross examination.

By Mr. McBee:

Q. How did you happen to show up for this trial?

A. Well, I was informed that I—it had been rumored that someone had either—either the Court had said, or someone in the court said I was to have been here, and, of course—

Q. Well, it was rumored that you were to be here, and you came?

A. That's right.

Q. And did you ask these lawyers to represent you?

A. Well—

Q. I am talking about this battery of counsel here from New York, and one from Birmingham.

A. Did I ask them to represent me?

Q. Yes, did you ask them to look after your case?

A. I was talking to them at lunch.

Q. At lunch, and you told them not to represent you, you didn't want them to represent you?

A. No, I didn't tell them that.

Q. I understood, then, you did want them to represent you?

A. Well, I hoped they would, yes.

Q. Yes, you wanted them to do it?

A. Yes.

Q. Now, where is your home?

A. Mississippi.

Q. Where do you come from in Mississippi?

A. I am from Cleveland, Mississippi.

Q. When did you come over to Birmingham?

A. I don't remember the date, but it was on a Friday I came over.

Q. Well, was it—what Friday?

[fol. 391] A. I guess it was Good Friday.

Q. You never came before Good Friday?

A. Well, I had been here on several occasions, but Good Friday was the first day I came in terms of now.

Q. All right, you came on Good Friday?

A. Yes.

Q. That was the last occasion when you have been to Birmingham?

A. That's right.

Q. And you stayed in Birmingham since that time?

A. That's right.

Q. What is your occupation back in Cleveland, Mississippi?

A. I am the field secretary for the Southern Christian Leadership Conference.

Q. You are a field secretary?

A. For the Southern Christian Leadership Conference, yes.

Q. All right, when you came to Birmingham, did you attend any of the meetings that have been held at these various churches? Are you familiar with this group called the Alabama Christian Movement for Human Rights?

A. Yes, I am.

Q. As a matter of fact, that group is affiliated with your Southern Leadership Conference, is it not?

A. I understand that it is.

Q. All right. Now, who invited you to come over here?

A. Well, usually if I am afraid that some violence might break out in a community—

Q. Wait a minute, let me see if I can get this. You got afraid some violence was going to break out?

A. That's right, and usually if something might happen, I usually go around and preach nonviolence.

Q. I see, you are the great nonviolence preacher?

A. That's right.

Q. All right. All right, did you come to Birmingham by invitation, or just because you wanted to come?

[fol. 392] A. Well, I heard the news over the radio.

Q. What did you hear over the radio?

A. Well, I heard that they were arresting some Rabble Rousers in general.

Q. What, now?

A. I heard in Cleveland on the Cleveland radio station they had enjoined some Rabble Rousers.

Q. Enjoined some Rabble Rousers. All right, did they say what kind of Rabble Rousers it was?

A. They just said Rabble Rousers. I didn't know who it was.

[fol. 393] Q. But the fact you heard from Rabble Rousers were enjoined you decided to come to Birmingham?

A. That's right.

Q. And you had no idea what kind of Rabble Rousers were involved?

A. No. When I heard the announcement I didn't know who the Rabble Rousers were. They just said Rabble Rousers.

Q. When you came to Birmingham were you acquainted previously with Rev. Martin Luther King, Jr.?

A. Yes. I worked for him.

Q. You know Rev. Wyatt Tee Walker?

A. Yes, I knew him.

Q. And you knew Rev. F. L. Shuttlesworth?

A. Yes, I have been knowing them.

Q. You have been knowing them quite some time?

A. Yes.

Q. When you got Birmingham, did you inquire of them who was enjoined?

A. No, I didn't ask them who was enjoined.

Q. You didn't ask anything about the injunction?

A. Well, see, when they said Rabble Rousers I didn't think it was them because they are not Rabble Rousers.

Q. I see. But you said some Rabble Rousers, though, got your attention. Who did you think they were talking about?

A. The Klu Klux Klan and Citizens Council and this Nazi movement.

Q. You thought they were talking about the Klu Klux Klan, but they didn't say Klu Klux Klan?

A. No. They said Rabble Rousers.

Q. Did you ask these reverends here about what the Klu Klux Klan had been doing?

A. I knew what the Klu Klux Klan had been doing through the years.

[fol. 394] Q. I am talking about the Rabble Rousers that got enjoined. Did you ask them anything about that?

A. No, I didn't.

Q. When you got here, you didn't ask them anything about that?

A. No, I didn't.

Q. Did they invite you to speak at one of these meetings?

A. Somebody invited me to speak.

Q. Who would it be?

A. I forgot the person that invited me.

Q. Where did you speak?

A. At 16th Street Baptist Church.

Q. All right. When was that?

A. That was that Friday night.

Q. That was on Good Friday night?

A. Yes.

Q. Did you stay for the entire meeting?

A. I stayed for the entire meeting.

Q. From start to finish?

A. From start to finish.

Q. Did you hear Rev. Wyatt Tee Walker call for volunteers to die for him?

A. To die for him?

Q. Yes.

A. No, I didn't hear him call for that.

Q. Did you hear him call for volunteers to die for anybody?

A. No, I haven't heard him ask anybody to die.

Q. Haven't heard anything about that?

A. No.

Q. Did you hear him call for volunteers to march or to walk?

A. No, I don't know what the volunteers was for. Now, I heard the word "volunteers"?

Q. Who said it?

A. He probably did. You know, we asked people to volunteer their services to inform people about the struggle [fol. 395] that is going on here. We asked people to call people and ask them that they should be nonviolent.

Q. Did you call for nonviolent volunteers?

A. Did I call for them?

Q. Yes.

A. I always call for people to be nonviolent.

Q. I understand that is your general way of talking?

A. That's right.

Q. Now, did you say some rather mean things about the police department of the City of Birmingham?

A. I don't know what you would term something mean?

Q. Well, you did talk about the City of Birmingham Police Department, didn't you?

A. I talked about the Birmingham Police Department.

Q. You weren't complimenting them, were you?

A. They haven't done any work I don't think that warranted compliments.

Q. I didn't ask you that. I just asked you what you said.

A. Well, I don't have the manuscript of the speech.

Q. Do you have any recollection of what you said?

A. Well, I probably could give you generally what I said. I usually speak in terms of spirit, rather than terms of fact.

Q. Can you answer me truthfully and say whether you said anything complimentary about the Police Department of the City of Birmingham?

A. I don't recall exactly what I said. I have a feeling of what I said.

Q. You have a feeling you didn't say anything complimentary about them, don't you?

A. I don't too much about them to compliment them in terms of what I know about them.

Q. And you didn't compliment Commissioner Connor, either, did you?

A. Did I compliment him?

[fol. 396] Q. Yes.

A. I don't recall complimenting him.

Q. Did you call his name in the meeting?

A. Eugene Connor?

Q. Yes.

A. I don't remember using that name.

Q. You don't remember using the name Connor at all or "Bull" Connor?

A. Well, I probably used that.

Q. You probably used "Bull" Connor, but you know that is Mr. Eugene Connor?

A. I understood later that it was.

Mr. Greenberg: May it please the Court, isn't this examination getting rather far afield of the direct? May we object?

The Court: Let's see if we can get closer to the point.

Q. Now, you did on that occasion ask the crowd and speaking to the Negro population of the City of Birmingham generally, to "get up and walk", that was what you told them you wanted them to do?

A. Well, I preached a sermon about a man that was sick by a pool and Jesus asked this man to get up and walk.

Q. And you told them they were sick, too, didn't you?

A. That's right. They are.

Q. And you said, "Get up and walk."

A. That's right.

Q. That is what you told them to do?

A. Yes, but this is figuratively. I did not want anybody to get up and walk out while I was preaching.

Q. Oh, no, I understand that. But what you wanted them to do is to get out and walk in these marches?

A. No. When I refer to walking, I simply mean standing up and living up to one's manhood and shouldering one's responsibility, the whole ideal of walking like a man.

[fol. 397] Q. And what you were trying to get them to do was join in and participate in the activities of this movement, wasn't it?

A. That's right.

Mr. McBee: All right. That is all.

Mrs. Motley: That is all.

(Witness excused.)

Mr. Shores: We would like to call the Court's attention that on the docket sheet as regards James Bevel, the petition and rule was not found, not served, showing that he was not ever served.

Mr. McBee: He has been in Court himself and said these lawyers represent him.

The Court: The statement is what was on the docket sheet. All right.

J. W. HAYS, called as a witness, being first duly affirmed, was examined and testified as follows:

Direct examination:

By Mrs. Motley:

Q. Will you please state your full name and occupation for the record, sir.

A. My name is Joshua W. Hays, minister of Trinity A.M.E. Zion Church, 18 Ensley Avenue, Ensley, Alabama.

Q. Rev. Hays, were you ever served with a copy of the injunction issued by this Court?

A. Yes.

Q. When were you served?

A. I was served Tuesday at 6:00 o'clock following Easter, which was the 16th.

Q. Where were you when you were served?

A. I was at my home.

Q. Were you ever arrested for any activity in the City of Birmingham recently?

A. Yes.

Q. When was that?

[fol. 398] A. Easter Sunday afternoon.

Q. When did you get out of jail?

A. I got out of jail Tuesday morning at 1:00 o'clock.

Q. Were you ever served with the Order to Show Cause issued by this Court?

A. No.

Mrs. Motley: Those are all the questions.

Cross examination.

By Mr. McBee:

Q. Rev. Hays, I believe you said you were?

A. Yes.

Q. Are you a member of the Alabama Christian Movement for Human Rights?

A. Yes.

Q. How long have you been a member?

A. About six years.

Q. How did you get from Ensley over here to this Thurgood C.M.E. Church?

A. I drove over.

Q. How did you know to come?

A. I knew they were having a meeting.

Q. That was a well publicized meeting, wasn't it?

A. Maybe it was. I don't know, but I knew about the meeting.

Q. How did you hear about it?

A. I heard about it from the previous meeting I had attended.

Q. Which previous meeting had you attended?

A. I had attended a meeting Saturday night.

Q. You were at the Saturday night meeting?

A. Yes.

Q. And they were sending out and getting volunteers to call all over the community and get them there?

A. I don't recall that.

Q. You don't remember the volunteers they were calling for?

A. No.

Q. Were you in the meeting all the time?

[fol. 399] A. No. I was a little late getting to the meeting that night.

Q. Did they call for volunteers to do any walking?

A. Any walking?

Q. Yes, or marching, or whatever you want to call it?

A. Maybe they called for volunteers to walk.

Q. Well, as a matter of fact, they called for volunteers every night they met, didn't they, that you attended?

A. I didn't attend every meeting.

Q. But when you did attend?

A. Yes.

[fol. 400] Q. They called for volunteers every night?

A. Right.

Q. And your best recollection is they called for volunteers that night?

A. My best recollection, that's right.

Q. Did you volunteer?

A. No, I did not.

Q. Did you assist or help them in lining up the volunteers?

A. I did not.

Q. How many did they get to volunteer?

A. I beg your pardon?

Q. How many volunteered?

A. I couldn't state how many volunteered.

Q. But a number?

A. Yes.

Q. Was Wyatt Tee Walker one that spoke to them when they were volunteering?

A. I don't recall it was Wyatt Tee Walker. I don't believe it was. It might have been someone else.

Q. You are not sure who it was?

A. I am not sure who it was.

Q. Now, were you present on the news press release on the 11th of April?

A. No.

Q. Did you attend the meeting on the night of April 11th?

A. I did.

Q. You were there the entire meeting?

A. I was a little late coming in in that meeting and I was there until they closed.

Q. About what time did you get there?

A. Maybe about a few minutes of eight.

Q. Few minutes before eight?

A. Yes.

Q. When did the meeting start, seven?

[fol. 401] A. Well, truthfully, you don't know exactly when the meeting starts because they gather so quickly and fast. People just gets some stimulation and you just come. I don't know what it is.

Q. You don't know what it is that brings them out when they come?

A. Yes.

Q. Did they have a prayer meeting that night?

A. They generally have a prayer meeting.

Q. Was the prayer meeting over when you got there?

A. Yes.

Q. After the prayer meeting is when they had the speeches, is that right?

A. That's right.

Q. Did you hear the speeches?

A. I spoke.

Q. You were one of the speakers?

A. That's right.

Q. Did Rev. Martin Luther King, Jr. speak too?

A. Rev. Martin Luther King, Jr.?

Q. Yes.

A. No.

Q. Did Rev. Abernathy speak?

A. No. They were in jail.

Q. Good Friday they were in jail?

A. Yes.

Q. Who else spoke besides you?

A. This was Saturday night. I don't recall who else spoke.

Q. You don't recall?

A. No.

Q. But you remember Wyatt Tee Walker was there?

A. Yes.

Q. He was present?

A. Yes.

[fol. 402] Q. Was Rev. Shuttlesworth there or was he in jail?

A. No, he was not there. I don't think he was in jail either.

Q. When you were arrested over at the city jail were you interviewed by one of the detectives?

A. Yes.

Q. And you told the detective that you knew about the injunction?

A. I told the detective I had heard about the injunction.

Q. You told the detective you had heard about the injunction?

A. Yes.

Q. And you told him that on Sunday night immediately after you were arrested?

A. Well, it wasn't immediately after I was arrested.

Q. Well, a short time after you were arrested?

A. No. It was about 2 o'clock Sunday morning.

Q. You mean the officer didn't interview you until 2 A.M. on Sunday morning?

A. That's right because, see we were put in Sunday evening and it was around 2 o'clock before we were interviewed.

Q. And you are certain it was around 2 o'clock.

A. Yes.

Q. Which detective interviewed you? Did you know him or did you ask his name?

A. No, sir, I didn't.

Q. When did you hear about the injunction?

A. I heard about the injunction probably Friday.

Q. That was Good Friday?

A. Good Friday. I got a flash over T.V.

Q. Over the T. V.?

A. Yes.

Q. Now, you are an officer in this Alabama Christian Movement?

A. No, I am not.

Q. You are not an officer but you are a member?

[fol. 403] A. Yes.

Q. How long have you been a member?

A. I told you around five and one-half or six years.

Q. I believe you answered that awhile ago. I forgot.

A. Yes.

Q. Now, on Friday night when you heard about the injunction did it say anything about the Alabama Christian Movement for Human Rights?

A. No. I just heard this news flash that an injunction had been issued against demonstrators in Birmingham.

Q. Against demonstrators in Birmingham? Now, when you came to the church—when did you come to the Thurgood Church that Easter Sunday?

A. Maybe around 3:30.

Q. In the afternoon?

A. In the afternoon.

Q. When you got there in the Thurgood Church did you know you were going to be in a procession or march or walk or some demonstration of that type?

A. When I arrived at the church?

Q. Yes.

A. I probably had because I most likely—I had decided within myself I would.

Q. You had decided, but you knew it was planned?

A. I knew something would take place, but what would take place at that particular time I didn't know.

Q. But there was some demonstration of some kind, you understood, was going to take place?

A. Yes.

Q. And you went there for the purpose of taking part in it?

A. Yes.

Q. Now, did you inquire further in detail about what the injunction was about?

A. Well, no, the injunction, I didn't inquire anything [fol. 404] about the injunction because—

Q. You didn't inquire at all?

A. No, because I had not been enjoined.

Q. You had not been enjoined you understood?

A. Yes.

Q. But you didn't care to inquire about what the demonstrations were that was enjoined?

A. I didn't even know what it was.

Q. You didn't ask anybody?

A. No. There wasn't anybody there that I felt at that particular meeting was able to give me the information.

Q. Well, A. D. King was there, wasn't he?

A. He weren't there when I arrived.

Q. Well, he came in, didn't he?

A. Yes.

Q. And Wyatt Tee Walker was there?

A. Not when I arrived.

Q. But he came in?

A. Yes.

Q. He came in before the march took place?

A. Yes, he came in before the march took place.

Q. You did take part in the march?

A. Yes.

Q. Did you have a robe?

A. Yes, I have a robe, but I didn't have on a robe that day.

Q. You didn't wear a robe that day?

A. No. I was in my clerical outfit.

Q. That was a short robe with a collar?

A. Yes. I never call it a robe. It is just a shirt and collar.

Q. I understand. Were you in the front of the parade or march or behind or where were you?

A. I was not in front, nor behind. I was probably two or three couples from the front.

[fol. 405] Q. Who organized the march inside the church as it was organized?

A. I don't recall if anyone organized it.

Q. Well, that was spontaneous too, wasn't it?

A. I beg your pardon?

Q. It was spontaneous also?

A. It seems as if it was.

Q. It seems like it was? And where was it going to be spontaneous to go to?

A. I don't know where we were going.

Q. Who was the leaders of it?

A. I don't know that.

Q. Well, who was in the front?

A. I don't—you see, after we came out of church I don't know who was in front.

Q. When you came out the church who was in front?

A. I beg your pardon?

Q. Who was in front when you all came out of the church?

A. I don't recall.

Q. Was Rev. A. D. King one of those in front?

A. I don't recall it.

Q. They had robes on, didn't they, those that were in front?

A. I don't recall how many robes were in the movement.

Mr. McBee: I believe that is all.

Mrs. Motley: Those are all the questions, Your Honor.

(Witness excused.)

Mr. Shores: Judge, we have a short witness we would like to put on.

The Court: All right.

Mr. Shores: Inspector Haley.

INSPECTOR W. J. HALEY, recalled as a witness, being previously duly sworn, was examined and testified as follows:

[fol. 406] Direct examination.

By Mr. Shores:

Q. Inspector Haley, I believe for the record you already have given your title and name?

A. That is correct.

Q. I believe you were asked to obtain certain information with regards to assignment slips of your officers during the demonstration?

A. That is what I understood you asked for yesterday, and I had to estimate it. I do have the figure at the present time.

Q. And what number do you have as Officers used on the Good Friday—during the Good Friday demonstration?

A. On the motorized patrol we had two sergeants and forty-six motorized patrolmen. That consisted of three-wheelers and solos, that is the two-wheeled motor is what we call a solo.

Q. And on Easter Sunday how many?

A. That was Easter Sunday. That was all of our force, with the exception of four men who were off. One was sick with pay, one injured with pay, and one out of town on vacation and one on a regular off day.

Q. Did you have any men in plain clothes during that time?

A. Yes. I would say about twelve or fifteen. That is detectives and special detail men.

Q. That would be somewhere about sixty, would you say?

A. Well, there were other officers in addition to those. Now, those were the motor solo and three-wheel motors you asked me about yesterday. We had other patrol units. We had three patrol wagon drivers and we had five or six cars that were in that immediate vicinity that carried two men each. Then we had Chief Moore, Captain Evans, Captain McDowell, Sgt. McDonald and myself that I recall specifically that were there. I judge altogether we had probably eighty or possible eighty-five men there.

Q. Was that during the whole of the demonstration on [fol. 407] each day there was a demonstration?

A. No, that was the Easter Sunday. That was the information you asked me for yesterday.

Q. Do you have the number for Good Friday?

A. It was approximately the same.

Q. Do you know how many were arrested on Good Friday and how many were arrested Easter?

A. There were fifty-one arrested in the marches on Good Friday and in the 20's on Easter Sunday.

Q. And on Easter Sunday you had a larger crowd than you had on Good Friday?

A. That is correct. Easter Sunday is when the marches and broke and ran and they were not able to apprehend all of the marchers.

Q. And you had approximately two officers to every person arrested? Would that be a fair estimate?

A. In the vicinity or, rather, in the immediate block I would say that would not be correct because these men were not all stationed at that particular intersection. We had the area blocked off with fixed positions, that is on a fixed station to turn traffic. We had men who were patrolling in the immediate vicinity in case we had undue trouble with the crowd where they could be called in immediately. As far as the actual number that were on duty at the church or within a block of the church, it would not have been nearly the number that I gave you.

Q. How many would you say were actually at the church or in the immediate vicinity of the church?

A. Well, in the immediate vicinity the entire group when you say immediate vicinity because they were in the downtown area within a few blocks of there and were so instructed and we had a standby force of the corner men who were at the City Hall and we did not call those men out. That is, we did not bring them to the scene because the disorder had been straightened out by the time they were ready and then we cancelled the call.

[fol. 408] Q. In other words, you had the necessary men at all times to control the crowd?

A. In my opinion we did.

Mr. Shores: I believe that is all.

Cross examination.

By Mr. Breckenridge:

Q. Inspector, at these times was the number of officers used more or less than ordinary?

A. It would be more than usual in the critical period of these demonstrations. We altered the hours of the day-

shift motorized patrols to where they would overlap and work until after dark. We brought the evening shift motors that normally work from three until eleven, we brought them in early so they would be available for duty at an earlier hour than the three o'clock appointed time.

Q. I will ask you whether or not during the week or ten days of these demonstrations prior to Easter, including Easter, the Police Department of the City of Birmingham had more or less men on duty than they would ordinarily have?

A. We have had more. We have worked men on their off days, and the traffic division particularly, and in the superior officers forces, and some in the patrol division, but more of them were the motorized patrol and corner men on traffic because normally their days off are Sunday.

Q. Do you have any information or do you know the additional cost, if any, that that has placed upon the City of Birmingham?

A. Through Sunday it was something over \$4,200 additional over and above the ordinary payroll.

Q. For over and above the ordinary duties in the city?

A. That's right.

Mr. Breckenridge: That is all.

Mr. Shores: That is all.

(Witness excused.)

The Court: We will adjourn at this time until 9:30 in the morning.

[fol. 409] The Court: The witnesses who are kept out of the court room under the rule of course should not be discussing any of the facts or circumstances that take place here. Any facts or circumstances that take place in the court room should not be discussed with them in any way. I should like to caution everybody concerned about that, about not discussing any of the facts of this case with the witnesses who are out of the court room.

Mrs. Motley: May it please the Court, on yesterday one of the respondents, Mr. Smith, took the stand, and he would like to clarify part of his testimony in the record.

The Court: All right, call him back.

Mrs. Motley: I would like to now recall him.

N. H. SMITH, recalled as a witness, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mrs. Motley:

Q. Rev. Smith, on yesterday when you were on the stand you recall being cross examined by Mr. McBee, do you not?

A. Uh huh.

Q. I would like to show you page 185 of the transcript and direct your attention to the following question, which reads as follows: "Now, it is also your policy and your purpose and your goal if you don't get what you want in another way you set about doing it by revolution, is it not?"

Then there was an objection by Mr. Greenberg and your answer was: "I don't—I do not know."

I understand you want to explain now what you thought you understood by the question.

Mr. McBee: We would object to what he understood by the question. The question is very clear. After he has had a chance to consult with counsel—perhaps maybe a lot of witnesses would like to change their testimony after consulting with counsel, but he was examined and put on the stand by his counsel and cross examined, and the testimony certainly is clear, the question is clear, and the ob-[fol. 410] jection was made and he answered the question after the objection.

Mrs. Motley: Maybe if Your Honor hears his explanation you can rule on it. I think that would clarify what we are trying to do.

(Handing copy of transcript to Court, who reads indicated section.)

The Court: As I recall that particular answer was given almost before the objection was made. I will allow him to answer that.

Mr. McBee: We except, may it please the Court.

The Court: All right.

A. I thought he used the word resolution rather revolution, and when he said revolution I didn't understand what kind of resolution he had in mind.

Mr. McBee: He asked me that question yesterday.

Mrs. Motley: He asked you that question yesterday, you said?

Mr. McBee: I asked him if he didn't understand my question yesterday why didn't he ask me that yesterday.

The Witness: No, I thought you said resolution.

The Court: Well, is that the only answer you want to give?

Mrs. Motley: Yes, he wanted to clarify the record to show he understood Mr. McBee said resolution..

The Court: Do you have any other questions you would like to ask him?

Mr. McBee: Yes, sir.

Cross examination.

By Mr. McBee:

Q. How do you assume that I thought you could accomplish your goal by resolution? What could you resolute?

A. We could send resolutions to the President of the United States.

Q. Who is going to send to the President of the United States?

A. The organization.

Q. Well, you have already done that, haven't you?

A. From time to time.

Q. You have constantly?

A. That's right.

[fol. 411] Q. Called the President on the telephone and contacted him in other ways?

A. I haven't.

Q. But I say your movement has; Rev. Martin Luther King, Jr.

A. I am sure he has had opportunity to talk to the President of the United States.

Q. And you knew that, didn't you, that you had made resolutions and sent resolutions to the President?

Mr. Greenberg: We object. The question originally put was far afield and we were merely trying to clarify it, and now—

The Court: Overrule the objection. It has to do with the meaning he gave to this particular word.

A. Relative to this particular movement that is going on in Birmingham as to whether or not resolutions have been sent to the President of the United States during this particular time, I did not know, and that is the answer I gave.

Q. Oh, so that is what you understood?

A. That is what I understood.

Q. All right.

The Court: Is that all?

Mr. McBee: Yes.

Mrs. Motley: No further questions.

(Witness excused.)

Mr. Greenberg: We would like to have Mr. Connor.

EUGENE CONNOR, called as a witness, having been duly sworn, was examined and testified as follows:

The Court: I believe you are still under oath. Just have a seat.

Direct examination.

By Mr. Shores:

Q. You are Commissioner Connor?

A. Uh huh.

Q. Former Commissioner of the City of Birmingham?

A. Yes. Did you say former Commissioner? I am Commissioner.

Mr. McBee: We object to the form of the question as [fol. 412] calling for a conclusion of law.

The Court: For the record, this is the same witness who testified yesterday and he was called to the stand by respondents.

Mr. Shores: Withdraw that, Your Honor. We would like to have you look at these and have them marked for identification. (Handing witness two sheets of paper.)

A. I don't think I have seen these on that kind of paper or—

Q. No, whether you received these messages.

A. I don't think so. Let me look at that again. Is this the same one you showed me yesterday on Western Union telegraph paper?

Q. No, that is a different date, I believe, a different one.

Mr. McBee: We would object to these because they do not relate to anything subsequent to the issuance of the injunction.

The Court: As I understand, they have not offered them, but merely asked him if he could identify them.

The Witness: Let me see them again, Arthur. Arthur, I haven't seen that telegram. I haven't seen that.

The Court: Do you intend to further identify those?

Mr. Shores: I would like to have a word with the Chief to see if he can identify them. They are addressed to him also.

The Witness: The only one I remember getting is the one they had up here yesterday.

The Court: I will ask that those be identified as Exhibits for identification only.

(Whereupon, the above-referred to documents were marked as Respondents' Exhibits B and C for Identification only.)

The Court: Can we resume with this witness later on after you check that out?

Mr. Shores: Let me ask this question and then we will get an instanter subpoena for Western Union.

Q. Do you recall receiving any telegram from the Alabama Christian Movement for Human Rights on or about April 5th and on or about April 6th?

A. I recall receiving one telegram. I couldn't say on or about when. I say this month.

[fol. 413] Q. Did you answer that telegram?

A. I answered one.

Q. And is that the answer that was shown to you yesterday?

A. That's right.

Q. And you don't know whether or not it was one of these telegrams that you had received?

A. The one I got is on this kind of paper. (Waving a sheet of yellow Western Union paper.)

Q. I mean do you recall if the message was the same as the message on one of these telegrams?

A. No, I don't recall.

Q. I see. Now, this is the message, and see if this will refresh your recollection. This one is dated April 5th.

(The telegram dated April 5th and marked Respondents' Exhibit B for identification was read aloud by Mr. Shores.)

Is that the one which you answered?

Mr. Breckenridge: Could I refresh the recollection of the Commissioner at this time?

Mr. Shores: I am trying to refresh it from this telegram.

The Court: Go ahead.

A. I believe the one I answered had something in there about marching.

Q. Let's see if this is the one you answered. This is the one dated April 6th.

(Whereupon the above-referred to telegram dated April 6th and marked Respondents' Exhibit C for identification was read aloud by Mr. Shores.)

Mr. McBee: What was the date of this?

Mr. Shores: April 6th.

Mr. McBee: We would object to that, Your Honor. That is before the date of any of the matters involved in this hearing before Your Honor now.

Mr. Shores: Your Honor, this is an offer to show that this is the telegram the answer to which was introduced [fol. 414] yesterday into evidence without objection.

Mr. McBee: That doesn't mean we are not objecting to this.

Mr. Shores: We want to know if this is the one that the answer was to.

The Court: This is dated April 5th and this is what?

Mr. Shores: April 6th.

The Court: I am looking at Respondents' Exhibit A, and it couldn't be an answer to that one.

Mr. Shores: This is the 5th and this is the 6th.

The Court: The answer couldn't have come before the request, if that is the correct date shown.

Mr. Shores: There were two telegrams.

The Court: I will allow him to answer.

Mr. McBee: We except.

A. I will be truthful about this, I can't answer that. I can go back to my office and get the original, which is on file.

Mr. Shores: Your Honor, we can take another witness while he goes and gets the original.

Mr. Breckenridge: We would like the privilege of cross-examining him to the extent of the question that he has already answered.

The Court: All right, are you through other than that?

Mr. Shores: Yes, sir.

Mrs. Motley: Just a moment, Your Honor.

The Court: Are you now through other than that? All right, go ahead.

Cross examination.

By Mr. Breckenridge:

Q. Commissioner Connor, for the purpose of refreshing your recollection, I will hand you here a copy of—what is this instrument I hand you?

A. A telegram.

Q. Do you know whether or not that was received by you, this particular one, for the purpose—and that you did answer that telegram on the same date?

The Court: Before you answer, let Arthur Shores see that.

[fol. 415] (Document examined.)

Q. After having refreshed your recollection I will ask you if it is not a fact that the telegram which has been introduced in evidence as Respondents' Exhibit A was sent in answer to the telegram that you received on the same date, signed F. L. Shuttlesworth, President, and N. H. Smith, Secretary, the date being April 5, 1963?

A. Uh huh.

Q. And in your best recollection is it the only telegram that you received?

A. It is the only telegram that I received.

Q. And you did receive this?

A. Yes, sir, and answered it.

**Q.** And that is the—then you do recall receiving this telegram? That being a copy of the one I showed you that is on file at City Hall?

**The Court:** The witness is looking at Respondents' Exhibit B for identification.

**A.** Yes.

**Q.** After refreshing your recollection you did receive one telegram?

**A.** That's right.

**Q.** Which is Respondents' Exhibit B?

**A.** Yes.

**Mr. McBee:** If he is offering it—

**Mr. Breckenridge:** I am not offering it. I am just clarifying it. That is Respondents' Exhibit B for identification at the present status.

**Mr. Shores:** I believe he said he did have another one in his office.

**The Witness:** It is just a copy.

**By Mr. Shores (continued):**

**Q.** You say this is the one you did receive?

**A.** Exhibit B, yes.

**Mr. Shores:** We would like to offer this in evidence.

**Mr. McBee:** That involves matters—the rule to show cause—we are trying two specific incidents here, the [fol. 416] marches or walks or whatever you refer to them as. One happened on Good Friday and one that happened on the 14th, and we have some statements that occurred at various times and other occasions which are related to this citation of contempt, but we are not trying that now. That was prior to or subsequent to the occasion when the injunction was issued on the 10th. It is not subsequent to the 15th when this citation was filed. The contempt petition was filed, and we object to that.

**Mr. Greenberg:** The issue here is whether or not these walks were unlawful. The injunction prohibited all unlaw-

ful activities, and we say walks certainly are not unlawful. Permission has been requested and has been improperly denied. They are lawful.

Mr. Breckenridge: We don't agree with that statement of the law, that if permission is improperly denied the law permits remedy by mandamus.

Mr. Shores: This is in answer to the telegram introduced yesterday and he identified it and says he remembers receiving it.

Mr. McBee: May I remind the Court we didn't introduce the telegram he is referring to. We didn't object to it, but we didn't introduce the telegram he is referring to.

The Court: Both of these telegrams have to do with picketing. I am going to overrule the objection and allow it into evidence.

Mr. McBee: We except.

The Court: As giving the Court further idea into the character of all of these incidents.

Mr. Shores: Thank you, Your Honor.

(Whereupon, the above-referred to telegram previously marked for identification as Respondents' Exhibit B was received in evidence, and the same is set out in words and figures at the end of this transcript.)

By Mr. Shores (continued):

Q. Did you take that matter up with the Commission, Mr. Connor?

A. No.

Mr. McBee: We object to that, may it please the Court.

The Court: Sustained.

Mr. McBee: Move to exclude the statement.

[fol. 417] The Court: I think you reserved the right merely to go into the question of his receipt of this telegram, and this is his second time on the stand and this is recross, really. I just have to limit your questioning.

Mr. Shores: Well, that is all.

The Court: This is redirect, I might say.

Mr. Shores: That is all.

Mr. McBee: If the question was answered, we move to exclude the answer.

The Court: The answer is excluded. Your objection is sustained.

[fol. 418] LOLA HENDRICKS, called as a witness, being duly sworn, was examined and testified as follows:

Direct examination.

By Mrs. Motley:

Q. Mrs. Hendricks, would you please state your full name for the record?

A. Lola Hendricks.

Q. Where do you live, Mrs. Hendricks?

A. 842 Centerway Southwest, Birmingham, Alabama.

Q. Are you a native of Birmingham, Alabama?

A. Yes, I am.

Q. Are you a member of the Alabama Christian Movement for Human Rights?

A. Yes, I am.

Q. How long have you been a member?

A. For seven years.

Q. Mrs. Hendricks, have you ever had an occasion to request or make application for a permit to parade, or demonstrate on behalf of the Alabama Christian Movement for Human Rights?

Mr. Breckenridge: Your Honor, we object to that unless the question is limited to the particular parade involved in this litigation. That is Good Friday and Easter Sunday.

The Court: I think it is a preliminary question. I will overrule the objection.

Mr. Breckenridge: We except.

A. Yes, I have had occasion to ask for one.

Q. When was that?

A. April 3, 1963.

Q. And where did you go?

Mr. McBee: We object to that, April 3rd, 1963.

The Court: Sustain the objection.

Mr. Greenberg: May it please the Court, this is preliminary. We hope to develop that upon this visit a general request was made for ensuing dates, not for April 3rd. The request was made on April 3rd.

[fol. 419] The Court: Well, unless it has something to do with April 12th or April 14th, I don't think it would be relevant to our issues.

Mr. Greenberg: I think it would have.

The Court: All right if you restrict it to that, the Court will hear what she has to say with reference to April 12th and April 14th.

Q. Let me ask you this, Mrs. Hendricks: what did you do on April 3rd when you—first of all, where did you go on April 3rd?

A. On April 3rd I went to the City Hall. I went to the Police Department and I asked the man at the desk, Mr. Clayburn I would like to see the person or persons in charge to issue permits, permits for parading, picketing, and demonstrating, and he said—

Mr. Breckenridge: We object to what he said, and suggest the City Code sets out who should be applied to for a permit.

The Court: Sustained.

Q. After speaking to Mr. Clayburn, is it?

A. That's right.

Q. Was he a police officer?

A. He was the police officer at the desk.

Q. After speaking to him, where were you directed?

Mr. Breckenridge: We object to that on the same grounds as the preceding question, calls for hearsay, and irrelevant and immaterial to the issues in the case, if the purpose is to show the application for a permit to the City Commission and the City Clerk, who they have said are the parties through whom that application should be made.

The Court: Sustained. It may be entirely possible they may have been misdirected, or may have been turned down, or anything of that sort. Of course, the law we are concerned with has to do with the ordinance that says it must be made with the Commission. Unless there is some attempt [fol. 420] to comply with that particular ordinance—

Mrs. Motley: That is what we are trying to show, Your Honor, they tried to comply with the ordinance.

Q. What did you do after you spoke to Mr. Clayburn?

Mr. McBee: Your Honor, that is a rather broad question.

The Court: Overrule the objection.

Mr. McBee: We except.

A. I went to Mr. Connor's office, the Commissioner's office at the City Hall Building. We went up and Commissioner Connor met us at the door. He asked, "May I help you?" I told him, "Yes, sir, we came up to apply or see about getting a permit for picketing, parading, demonstrating"—

Mr. Breckenridge: We object to hearsay on the grounds one actual individual Commissioner cannot bind the Commission, and the law specifically shows—as a matter of fact, Commissioner Connor's telegram; too, indicated they should apply to the Commission, and said an individual Commissioner, I believe Respondent's Exhibit A, had no authority in that matter to grant a permit.

Mrs. Motley: The witness testified she went to the office of the Commissioners and was met at the door by Commissioner Connor. She went to the office of the Commissioners, is her testimony.

Mr. Breckenridge: I would like to take her on voir dire. I don't know of any office of the Commission, other than the Commission Chambers they meet in.

The Court: I will allow her to testify on that. Go ahead. Overrule the objection.

A. I asked Commissioner Connor for the permit, and asked if he could issue the permit, or other persons who would refer me to, persons who would issue a permit. He said, "No, you will not get a permit in Birmingham, Alabama to picket. I will picket you over to the City Jail"; and he repeated that twice.

[fol. 421] Mr. Breckenridge: I would like to move to exclude the answer as being wholly irrelevant and immaterial to the issues involved, not binding on the Commission. That is the only body authorized to issue permits for parading.

The Court: I will sustain the objection. I will exclude it from the record. I think if there is any error involved the record is clear. I don't think the statement of Mr. Connor would be binding on the Commission.

Mr. Shores: Except.

Q. Were you authorized by someone of the Alabama Christian Movement to seek this permit?

A. Yes, I was.

Q. Who authorized you to do that?

A. Rev. Shuttlesworth, the president.

Q. Were you accompanied by anyone on this occasion?

A. Yes, I was. I was accompanied by Rev. A. Hill of the Lilly Grove Baptist Church in Birmingham.

Mrs. Motley: That is all.

Mr. Breckenridge: No questions.

Mr. Greenberg: May it please the Court, we have no further witnesses. However, counsel would like to read a statement to the Court. We have a copy here to give to counsel.

Mr. McBee: Is this evidence?

Mr. Greenberg: This is something called for in the order to show cause.

Mr. Breckenridge: If it is considered as evidence—

Mr. Greenberg: If anything, it is, perhaps, in the nature of pleading. The order to show cause has called for a statement on behalf of some of the respondents as to what they intend to do in the future.

Mr. McBee: May I suggest, Your Honor, if we are going to have statements that are ex parte, or statements that are for the record, or whatever they may be, that they be put on the stand in the orderly, and normal, and usual fashion.

[fol. 422] Mr. Thompson: So that they may make these statements under oath, and if there is some question about it, we will have an opportunity to cross examine.

Mr. Greenberg: This is a statement of counsel. I would assume counsel would have authority to make such statement, and as to the matter of taking the stand, at the outset of this case we made a motion to sever the criminal and civil aspects of it. Since they have not been severed, the higher protection must prevail, and to suggest the parties be put on the stand is out of order.

The Court: I will take about a ten minute recess to read this and consider it.

(Whereupon proceedings were in recess from 10:05 A.M. until 10:30 A.M. at which time proceedings were resumed as follows:)

The Court: You want to have that marked for identification?

Mr. Greenberg: I don't know whether to call it an exhibit, or what. It is a statement we are offering to the Court and we would like to put it in the record.

The Court: You make it an exhibit and mark it for identification.

(Whereupon the above mentioned statement was marked Complainant's Exhibit D for identification, and is set out in words and figures at the end of this transcript.)

The Court: The Court has examined and read at length the statement of counsel which has been marked as Respondent's Exhibit D for identification only, and after reading it and analyzing the statement as to what it contains, it is the opinion of the Court that the statement of counsel will not be admissible in the case, but that the witnesses, themselves, would have to take the stand and be subject to examination by questioning, and cross examination, and in the absence of such examination of these witnesses, it would be necessary the Court deny the right of counsel to make such a statement as contained in Exhibit D.

[fol. 423] Mr. Greenberg: In effect, Your Honor is ruling the defendants cannot purge themselves of civil contempt without waiving rights to the criminal contempt. It is only by waiving the legal and constitutional rights in the criminal case can they purge themselves in the civil case, and that is the dilemma we sought to avoid in our original motion, which was denied.

The Court: The Court doesn't consider this statement in its form to be in any way a purging of the contempt charged in this cause.

Mr. Greenberg: May that statement be made part of the record as to what we attempted—

The Court: It has been identified as Exhibit D, but it will not be allowed.

Mr. Greenberg: But, may it be made part of the record that in the sense when an appeal is taken we have been considered to have offered it in evidence?

The Court: It will be considered part of the record in that respect.

Mr. Shores: Your Honor, our next witness was the representative from the telegraph office. Has he come? The Sheriff had gone for him.

The Bailiff: No, he is not here.

The Court: Do you have any other testimony other than that?

Mr. Shores: That was the only other testimony we had, Your Honor.

The Court: Well, let's see, how long will it take to get him here? Can you call the Sheriff to see how long it will take to get him here?

Mr. Shores: The Sheriff has already gone for him.

The Court: If you have no further testimony at this time, it will be necessary that we recess until this witness is brought in. The witness has not been served, and would [fol. 424] not come without service of subpoena.

Mr. Shores: He is on his way now, Your Honor.

The Court: I understand he is on his way. We will take a recess until he comes.

(Whereupon proceedings were in recess at 10:37 A.M.)

[fol. 425] The Court: For the sake of the record, the respondents will rest except for the reservation of the witness from Western Union or the Telegraph Company.

Mr. McBee: We might be able to substitute. Chief Moore says he checked with his office and they did find in his files a copy of a telegram which was supposed to have been received on the 6th which he has sent for and the lady is bringing it over.

#### REBUTTAL TESTIMONY ON BEHALF OF COMPLAINANT

JAMES D. WARE, recalled as a witness, was previously duly sworn, and testified as follows:

Direct examination.

By Mr. McBee:

Q. Mr. Ware, I would like to show you these photos and ask you if you took those photos?

A. Yes, sir.

Mr. McBee: I would like to ask first to get these four photos identified, and I believe they will be the Complainant's Exhibits 3, 4, 5 and 6.

(Whereupon said four photos were received and marked Complainant's Exhibits 3, 4, 5 and 6 for identification.)

Q. When did you take them?

A. On Easter Sunday.

Q. Was that the occasion that you have previously testified about in this court?

A. Yes, sir.

Q. Do those pictures clearly depict what occurred at that time and place?

A. Yes, sir.

Mr. McBee: I offer those pictures in evidence, may it please the Court.

(Whereupon said photographs were received in evidence as Complainants' Exhibits 3, 4, 5 and 6, and the Court Reporter hereby certifies that the reproduction of such exhibits in this transcript is difficult or impracticable, [fol. 426] which fact is hereby certified to the Clerk of this Court.)

Q. Now, at what time did you take those pictures in point of the proceedings there at the church?

A. May I see them again? All of these were immediately after leaving the church.

Q. Those were the pictures of the paraders or marchers or processioners or walkers or whatever they were as they left the church, immediately after they left the church?

A. Yes, sir.

Mr. McBee: That is all.

Cross examination.

By Mr. Greenberg:

Q. Mr. Ware, you testified these were pictures of the marchers as they left the church?

A. Immediately after they left the church.

Q. Immediately after they left the church? Is that one of them as they immediately left the church?

A. It is coming down the street within a block or block and a half of the church.

Q. And that one is nowhere near the church?

The Court: What exhibit?

Mr. Greenberg: I am sorry. That is Exhibit 3.

A. I say within a block and a half. I won't identify exactly how far.

Q. And Exhibit 5, where in relation to the church is that?

A. This apparently is where they turned up the alley or side street or whatever it is there after leaving the church.

Q. And Exhibit 4, that is persons other than the marchers, isn't it?

A. The marchers are in the background on this picture and the police are in the foreground.

Q. And Exhibit 6, I don't see anyone here in robes leading the march, do you?

A. I don't believe I see any in this particular picture.

Mr. Greenberg: Thank you.

[fol. 427]            Redirect examination.

By Mr. McBee:

Q. The last exhibit he asked you about which is Exhibit 6, is the church in the background, the church from which the march or procession originated?

A. I am not positive this is the church. There is a church here. I am positive this was within a block of the church where it originated.

Q. In other words, you are not trying to say it originated in this church that is depicted in the picture?

A. No, sir.

Mr. McBee: All right. That is all. Come down.

(Witness excused)

Mr. McBee: Your Honor, we don't of course admit the admissibility of it, but the young lady has brought from

the Chief's office the telegram that they have been referring to I presume—I don't know, but we will let them look at it and see.

Mr. Shores: We would like to call Chief Moore to the stand, if Your Honor please.

CHIEF JAMIE MOORE, recalled as a witness, being previously duly sworn, was examined and testified further as follows:

Direct examination.

By Mrs. Motley:

Q. Chief Moore, I would like to show you Respondents' Exhibit C which has already been marked for identification and ask you again whether you received that telegram?

A. I don't recall receiving the telegram. My office shows it was received in my office. Of my own knowledge at the minute I don't remember receiving it, but I am sure that I did receive it.

Q. I am afraid I don't understand your answer. You say you did and you didn't receive it?

A. I didn't say that. I said I didn't remember receiving it.

Q. You now remember receiving it?

A. I don't remember receiving it, but I will say I did receive it, or my office received it.

[fol. 428] Q. Who received it in your office?

A. I don't remember who received it.

Q. Have you ever seen it before?

A. I am sure that I have.

Q. When did you see this telegram before?

A. I saw it just a few minutes ago when I called the office and got it and it is probable I saw it before, but of my own personal knowledge I don't remember ever having seen it before.

Q. And you don't know the name of the person in your office who received this telegram?

A. I do not.

Q. Who usually receives telegrams in your office? Do you have a secretary?

A. I have two secretaries and one man that works in my office who is not a secretary.

Q. What is his position?

A. He answers the calls out of my office on the phone. He is a patrolman for the City of Birmingham.

Q. If a telegram is delivered to your office then which of those three persons is apt to receive it?

A. Anybody that is out on the front, or I might receive it in person if I happen to be sitting around when it comes in or they see me.

Q. Have you inquired in your office as to who did receive this telegram?

A. I have not.

Q. Could you do that?

A. I could, but I doubt if any person over there would be able to say exactly who received it. I am not denying it was received, if that will straighten the situation out.

Q. Now, what action, if any, was taken on this telegram?

Mr. McBee: We object to that, may it please the Court, what action was taken on the telegram. That is, according to the information I have, a telegram that is supposed to [fol. 429] have been sent and received on the 6th of April which was prior to any event which is presently being tried in Your Honor's court.

Mrs. Motley: Again, Your Honor, we are trying to show that these respondents sought to secure a permit and made many attempts to do so, and approached responsible city officials.

The Court: I will overrule and allow him to answer if he has personal knowledge.

Mr. McBee: We except, may it please the Court.

A. Do you mean what effort was made to get a permit for them?

The Court: Read the question back, if you will, and see if he understands the question.

(Question read)

A. Not any action at all.

Mrs. Motley: We would like to offer Respondents' Exhibit C.

Mr. McBee: We object on the same grounds that we have heretofore objected.

The Court: The Court has the same ruling. I will overrule the objection.

(Whereupon said telegram was received in evidence as Respondents' Exhibit C, and a true and correct copy of the same is set out at the end of the transcript of testimony in this record.)

Mrs. Motley: That is all.

Cross examination.

By Mr. McBee:

Q. This telegram says what is going to be done, it doesn't ask you to do anything, doesn't it?

A. It doesn't request us or me to do anything.

Q. Just telling you what is going to be done?

A. It informs me what is going to happen on that day.

Q. By the Rev. Shuttlesworth and the Alabama Christian Movement.

A. It is signed by F. L. Shuttlesworth, Alabama Christian—part of it is cut off.

Q. I will ask you, Chief, while you are on the stand—this is a rebuttal question—did you detail the officers who went to interview these defendants who were in the City [fol. 430] Jail on Easter Sunday night, including the Rev.

J. W. Hays and others among the group who were arrested and who are parties to this case?

A. I did.

Q. What time did you detail those detectives to interview the defendants?

A. I would say it is in the neighborhood of 6:00 P.M. on that day.

Q. Did the officers make a report back to you subsequent to the interview of the defendants in question?

A. Yes, sir, they did.

Q. What time did they report back to you that evening?

A. Somewhere between 8:30 and 9:00 o'clock that evening. I would say approximately 8:30 or 9:00 o'clock.

Q. Did Det. H. L. Jones report back to you at that time?

A. He was one of them.

Mr. McBee: That is all.

Redirect examination.

By Mrs. Motley:

Q. You say an officer reported to you after having interviewed the prisoners in jail?

A. I did.

Q. What was the officer's name?

A. The one he asked me about was Det. H. L. Jones.

Q. What did Officer Jones report to you?

A. He came back to my office and talked to me. I was in my office and Mr. McBee talked to him also at that time.

Q. What did he report to you?

A. I don't remember the exact details. He said he had talked to some of the people who were arrested in the parade.

Q. Did he give you the names of any people he interviewed?

A. I didn't take their names.

Q. Then you don't know who he interviewed, do you?

A. No, I don't know who he interviewed.

Mrs. Motley: That is all.

Mr. McBee: Come down.

(Witness excused)

[fol. 431] DETECTIVE H. L. JONES, recalled as a witness, being previously duly sworn, was examined and testified further as follows:

Direct examination.

By Mr. McBee:

Q. Det. Jones, are you the detective who interviewed the Rev. Joshua, or J. W. Hays at City Jail on Easter night after the April 14th event of 1963?

A. Yes, sir.

Q. At what time did you interview him approximately?

A. Approximately about 7:00 o'clock.

Q. That is 7:00 P.M., April 14th?

A. April 14th.

Mr. McBee: That is all.

Cross examination.

By Mrs. Motley:

Q. How many prisoners did you interview that night?

A. Four.

Q. Who were they?

A. There was Rev. Hays, Rev. Porter, Rev. King and Rev. Smith.

Q. Were there any other police officers interviewing prisoners?

A. Yes.

Q. Who?

A. Det. Ray was there, Det. Vance, Det. Ellard, Det. Harris and Det. Stevens and myself.

Q. How many prisoners were interviewed that night?

A. I believe twenty-nine, if I am not mistaken. I am not sure of that.

Q. When did this interviewing start?

A. I would say approximately a quarter to 7:00 or thereabouts. Are you referring to my interviewing or the other detectives now?

Q. Your interviewing.

A. About a quarter to 7:00.

Q. And you interviewed four prisoners?

A. Four.

[fol. 432] Q. How much time did you spend interviewing each one of these prisoners?

A. About ten minutes.

Q. Did you write down what they said?

A. No.

Q. You have no record of what they said?

A. No.

Q. Do you know whether any other officers later interviewed any of these prisoners?

A. The ones I interviewed?

Q. Yes.

A. No, I don't.

Q. What did you do after you interviewed these prisoners?

A. Went back to City Hall.

Q. What time did you get back to City Hall?

A. A little after 8:00.

Q. What did you do when you got back there?

A. Reported our interviews to Mr. McBee.

Mrs. Motley: Those are all the questions, Your Honor.

Redirect examination.

By Mr. McBee:

Q. Did I make notes of what you said?

A. Yes, sir.

Mr. McBee: You may come down.

(Witness excused)

Mr. McBee: As far as we are concerned, that completes our part of the case.

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[fol. 433] JOHN S. GANT, called as a witness, being duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Shores:

Q. Will you state your name, please, sir?

A. John S. Gant.

Q. By whom are you employed?

A. Western Union Telegraph Company.

Q. In what capacity are you employed by Western Union?

A. Assistant Operations Manager.

Q. Just what do your duties consist of?

A. They are many and varied. I have supervision over operations; we will put it that way.

Q. Would it come in your department the manner of the recording and keeping records of telegraphs that are sent to various persons?

A. It would.

Q. I show you a telegram dated April 6, 1963 addressed to Chief of Police Jamie Moore and Police Commissioner Eugene Bull Connor, City Hall.

A. Right.

Q. Is there any indication to determine whether or not that telegram was delivered?

A. There is not any indication on this message here to show that it was delivered. It shows that it was transmitted.

Q. And it shows that it was transmitted to the addressees on the telegram?

A. That's right.

Mr. Shores: Your Honor, this is the telegram that is already been introduced.

The Court: What exhibit is it?

Mr. Shores: Exhibit C, Respondent's Exhibit C.

The Court: All right.

Mr. Shores: That is all, Your Honor.

The Court: Anything for the City?

[fol. 434] Mr. Breckenridge: Yes, sir.

Cross examination.

By Mr. Breckenridge:

Q. Mr. Gant, on Respondent's Exhibit C, this telegram is addressed to Chief of Police Jamie Moore and Police Commissioner Eugene Bull Connor City Hall. Now, I will ask you whether or not in the delivery of that telegram one or two telegrams were delivered?

A. One telegram.

Q. Only one telegram?

A. Yes.

Q. Where a telegram is addressed jointly—I will ask you whether or not when a telegram is addressed jointly the telegraph company delivers to either of the parties?

A. Right.

Q. Do they make any further attempt to call the other party after they have delivered it to one of the parties named?

A. No.

Q. You testified on direct examination that it indicated on that telegram that it was delivered to the addressees named herein. Was that delivered personally to Chief Moore or Commissioner Eugene Connor?

A. I couldn't say whether it was delivered personally to either one of them. We transmitted it on the Desk-Fax machine.

Q. When you say it was delivered personally you mean delivered to the office, or rather delivered over the machine?

A. Yes, over the machine.

Q. At the City Hall?

A. Yes.

Q. And your record does not show any delivery to Commissioner Connor personally?

A. No.

Q. Nor delivery to Chief of Police Jamie Moore personally?

A. No.

Mr. Breckenridge: That is all.

[fol. 435]            Redirect examination.

By Mr. Greenberg:

Q. Mr. Gant, you said it was delivered by a Desk-Fax machine? It is not clear to us what kind of machine that is. Would you explain what a Desk-Fax is?

A. That is a facsimile machine. It is transmitted from our operation over to the City Hall.

Q. And the City Hall makes further distribution, is that correct?

A. That's right.

Mr. Greenberg: That is all.

Mr. Breckenridge: That is all.

The Court: You are excused, Mr. Gant.

(Witness excused)

The Court: Anything further?

Mr. Shores: Nothing further, Your Honor.

The Court: Anything further for the City?

Mr. Breckenridge: Nothing further, Your Honor.

The Court: We will adjourn at this time until 1:45 and take the argument.

(Whereupon, at the hour of 11:40 A.M. April 24, 1963, the proceedings were in recess until 1:45 P.M. when the proceedings continued as follows:)

[fol. 436] The Court: As to this amended answer which has been placed before me at this time by the respondents—

Mr. Shores: Your Honor, that answer is not a part of this proceeding. That is an amended answer to the answer filed to the complaint.

The Court: You are not filing it for the purpose of this proceeding at all?

Mr. Shores: No.

The Court: All right. Then, the Court won't consider that at this time.

Is the City ready?

Mr. McBee: We are a little bit in the dark about the document Your Honor was looking at. We haven't seen it.

The Court: It is an amended answer that has been filed, but it is not for the purpose of this hearing.

Mr. Amaker: It was an answer to the Bill of Complaint upon which the original injunction was ordered.

Mr. McBee: I see.

#### RENEWAL OF MOTIONS BY DEFENDANTS AND RULINGS THEREON

Mr. Shores: Before the City proceeds, we would like, before they make their arguments in chief, we would like to renew all of the Motions that we made at the beginning of the proceeding, and we would further like to move that the evidence be excluded as to all respondents, and most especially to the respondent Andrew Young. In the arguments yesterday with respect to the exclusion of testimony as to the various respondents, there was some doubt at the time as to the part that Andrew Young had played with respect to this meeting, but on further examination of these transcripts and testimony as given by Inspector Haley, he stated on Page 34 of the transcript that he could not identify Andrew Young on either Good Friday, or Easter Sunday, and J. Walter Johnson placed Young at the Thursday night meeting, but stated in his judgment certain statements attributed to him. It appears the only testimony connecting Andrew Young was he was present at the meeting, as were several hundred people, and there was nothing

[fol. 437] connecting him with either of the parades on Good Friday, and the parade on Easter Sunday, which seems to be the crux of the State's case, and this being criminal contempt, we respectfully submit it is to be proved beyond a reasonable doubt that this respondent did, in fact, violate the injunction according to the allegations made in the rule to show cause, so, for that reason, Your Honor, we respectfully submit Andrew Young should certainly be dismissed from this proceeding.

Mr. McBee: Would you like to hear from the City on that question?

The Court: Yes.

Mr. McBee: This is the testimony of Mr. Johnson, and here is what he says at one point in his testimony concerning Rev. Johnson—Rev. Young, I mean. Rev. Young introduced them as having come out of jail. There were about twenty of them who were leading the singing. Young spoke for a few minutes after Bevels speech, just a very few minutes. He said we have demonstrated to the world the power of this movement, now to demonstrate its persistence.

Now, we submit, may it Please the Court, that he was specifically bragging about the fact that he had violated the injunction, and he was calling upon the people there in this assemble at this meeting of the Alabama Christian Movement for Human Rights, as it is called, to continue to show how persistent they could be in the demonstrations that had been carried on.

The other point—the other point, the same witness was soliciting membership cards. He says that everyone in this movement should have a card, should carry a card. They said that everyone of them should carry one of these membership cards, everyone in the demonstration, everyone participating at all should be carrying a card. In fact, every Negro, as they put it, should be carrying a card. Now, that is a statement that was made as to the—as to Rev. Young.

[fol. 438] The Court: Is all that by the witness, Johnson?

Mr. McBee: No, sir. I won't be certain about that. I am not positive.

Mr. Amaker: Yes, it is. It is all by Johnson.

Mr. McBee: Let me look in the index to see where he starts, Judge. Where does Johnson start? What page?

Mr. Thompson: It is indexed in your book.

Mr. McBee: 48 to 66. Yes, Your Honor, that appears to be in his testimony.

The Court: All right.

Mr. McBee: Now, the point that is in question here about the identification of the witness—I mean of the speaker, he says speaking here at this time about the cards, membership cards, he says is it your best judgment Rev. Young made the statement and then the answer, it is my best judgment, but as I say, I cannot swear to that. Then, Attorney Shores objected, and then stated he thought the witness was confused about the degree of knowledge required as he testified in his best judgment, and then the Court said, the Court will receive as evidence all what took place in the meeting as identification of the person named there, and it is taken into consideration in that light. You may go ahead.

Now, there was no question at all about the second statement as to identification of who made the statement. He said Rev. Young, without any equivocation. That came at a later time as he read from his notes.

We submit that they have, in the absence of any denial whatever on the part of Rev. Young, is conclusive that he did violate the injunction.

Mr. Shores: I am sure Your Honor is cognizant of what is embraced in that injunction, and there is nothing in the injunction to enjoin anybody from carrying a card, a membership card in the organization, nor was there anything in the injunction restraining any individual from attending or [fol. 439] holding any meeting, and the fact that he made a statement we have demonstrated, he didn't say they were going to continue to demonstrate, he didn't urge anybody to demonstrate, and how to demonstrate, and he did not elaborate. There is no explanation as to what was meant by that.

It could have been merely he was commenting on what had happened. But, Your Honor enjoined them from parading, from picketing, and the whole crux of this hearing has been on whether or not that particular portion of the injunction was violated.

At times, it was sought to introduce evidence as to set-ins. That was ruled out, and it finally boiled down to the final analysis the only matter before this Court was whether or not they had violated the injunction of parading and picketing, and there is nothing connecting this respondent with having urged anybody to parade, or having urged anybody to picket. The fact that he introduced individuals who had been in jail does not imply that he urged them to violate any injunction, so, for that reason, Your Honor, we submit that there is no testimony connecting this respondent with violating this injunction, and for that reason he should be discharged.

The Court: I would like to ask one question. I don't know that Rev. Young—is he in court? You are Rev. Young? As I understood, yesterday he was not in court. I gave him permission to be out, and I just wanted to be sure he was here and he had the opportunity to be present today when this motion was made, because I assume he was not here at the time the testimony was taken relative to what he stated.

So far as the motion is concerned with reference to all of the other motions that you have renewed, at this time the Court would overrule those motions.

As to the motion concerning Rev. Young, and the evidence as it implies in this case, I will take that motion under consideration. I will have an opportunity to study this transcript with reference to the evidence that we have got. [fol. 440] I have got some notation, myself, with reference to the statements that were made by the witnesses, but I would want to check that back against the transcript. I will take that motion under submission. Anything further, then?

Mr. Shores: Nothing further.

Your Honor, I want it clear I was renewing all motions made, those at the beginning of the case, and those at the end of the State's case.

The Court: All right, I understand that. All motions will be overruled except for the one with reference to the Rev. Young, as I stated.

All right, we will begin with the arguments for the City.

[fol. 441] Mr. Breckenridge: Your Honor, the opening—

Mr. McBee: Do we have a limited time, or what is it?

The Court: I think an hour to the side ought to be ample to cover every phase of this testimony that we have been through.

Mr. McBee: Your Honor, it might be—I don't know about the law, but if Your Honor wants to—Your Honor, I assume, wants us to argue the law, too?

The Court: I would like for you to cover the law and the facts at this time, and at the conclusion of that time limitation, if you feel you have not covered such phases of it, I would be glad to hear a motion and consider that.

#### FINAL ARGUMENT ON BEHALF OF COMPLAINANT

Mr. Breckenridge: Your Honor, of course, Your Honor has heard the facts in the case from the witness stand, and is familiar with them. Your Honor, there has been raised a question of the validity of the City ordinance, specifically Section 1159 of the City Code of the City of Birmingham, which I believe Your Honor has had before you, which, in effect, requires the obtaining of a permit from the City governing body prior to the—any parade in the streets of the City of Birmingham. Even if that law were invalid, it is our position that the defendants were not entitled to ignore any injunction of the court of the State of Alabama. However, we believe the law is clear on the case that this ordinance is not invalid, and I would like to call Your Honor's attention to no less authority than the Supreme Court of the United States on that particular point.

I have here—and in discussing this law, we are not waiving our position that for any reason it were held in-

valid, we still insist the respondents were not entitled to violate it without some determination of this Court, or some court as to its validity, but the case of Cox versus the State of New York, 61 Supreme Court—

Mr. Greenberg: New Hampshire, isn't it?

Mr. Breckenridge: That's right, Cox versus the State of New Hampshire, 61 Supreme Court, 762; 312 US, 569. This case involved the injunction of five Jehovah's Witnesses for parading specifically as was done in this case, [fol. 442] except the evidence shows our case is more aggravated. In Cox versus New Hampshire, it was decided by Chief Justice Hughes in 1941, and in Cox versus New Hampshire the Jehovah's Witnesses met at the central location and then split up into four or five groups over the City, and they marched along the sidewalks single file. Each did have a placard, but the courts specifically held that the placard was not of particular importance. The court did say the defendants said they were some fifteen to twenty feet apart. The State insists the evidence clearly shows the marchers were as close together as it was possible for them to walk, and this was a demonstration by a religious group who had ignored a state law which required the obtaining of a permit prior to their demonstration. They may, or may not have been entitled to a permit, but they did not demand, nor were they turned down for a permit, and the Supreme Court of the United States, speaking through Chief Justice Hughes, I think has, in a nutshell, covered the fundamental principles of law which is involved in this case, and which is important if we are to maintain any semblance of authority of local government, and any semblance of authority of the abilities of the local government to control certain areas, and in this case the Supreme Court says there appears to be no grounds for challenging the ruling of the State Court that appellants were, in fact, engaged in a parade or obvious law the public wants. As the State Court observed, it was a march in formation, and its establishing an invalid torrid circus did not make it.

otherwise. It is enough it proceeded in order and close file as a collective body of persons on the city streets.

Chief Justice Hughes, I don't anyone will deny, is one of the greatest constitutional lawyers this country has produced, said further in defining the legal opinion here, civil liberties, as guaranteed by the constitution, employs the existence of an organized society maintaining public order, without which liberty, itself, would be lost in the excesses of unrestrained abuses.

The authority of municipalities to impose regulations in order to insure the safety and convenience of the people [fol. 443] in the use of public highways has never been regarded as inconsistent with civil liberties, but rather as one of the means of safeguarding the good order upon which they ultimately depend. The control of travel on streets of cities in the most familiar illustration of this recognition—the control of travel on the streets of cities is the most familiar illustration of this recognition of social need where a restriction of the use of highways in that relation is designed to promote the public convenience in the interest of all. It cannot be disregarded by the attempted exercise of some civil right, which in other circumstances would be entitled to protection. One would not be justified in ignoring the familiar red light because he thought it his religious duty to disobey the municipal gammon or sort and that means to direct public attention to an announcement of his opinion as regulates the streets for parades and processions which traditionally exercise his control by local government. The question in a particular case is whether that control is asserted so as not to deny or unwarrantly abridge the right of assembly and opportunity for communication of thought and the discussion of public questions emonorable associated with result to public places. The determination of that question, we submit to Your Honor, cannot be determined until there has been an application as required by the law, and either a denial or a granting, and the courts are available for any arbitrary abuse or discretion in that manner for any denial of civil

rights in that question. Certainly the freedom of speech is not unlimited, although there has been—the familiar situation, as Justice Holmes said when he said, “You have freedom of speech, but nobody could holler fire in a crowded theatre.” We have freedom of speech, but nobody would be allowed to exercise freedom of speech in disturbing the court room. Somewhere in there is a balance of authority. That law propounded by Chief Justice Hughes is a cornerstone upon which municipal and local governments must be established, and I am glad to see that in the changing situation as to civil rights in the Federal courts, that that is one situation and one case that has not been changed.

I have followed that case forward into *Bates* in 80—that [fol. 444] was 1941, in 80 Supreme Court, 516—or, 4112, 316 US, 516, *Daisy Bates versus Little Rock*, decided in 1960. The court decided that case along with others with recognition of that principle, because the Court, in this opinion, this opinion was written by Mr. Justice Stewart, says where there is a significant encroachment upon civil rights, the State may prevail only on showings of ordinate interest, which is compelling. He cites this case. It is a recognition, I submit, by the Supreme Court of the United States that control of the street in relation to parades is a case which requires the subordinating of any civil right to the public interest. Otherwise, why would the Supreme Court have cited that case. They cited it in 1960 in the *Little Rock* case, *Bates versus Little Rock*. So, we still have that situation, and then we come on to 81 Supreme Court, 907—excuse me, that is not the beginning of the case. We come to *Kronenberg versus the State of California*, decided in 1960, and the opinion written by Mr. Justice Hauling. The court says—

The Court: What is the citation, please?

Mr. Breckenridge: At page 1007, in the United States—in 81 Supreme Court is the citation which I am reading. Let me go first to page 1006, which he says at the outset we reject the view that freedom of speech and association, and he cites some cases, as protecting the first and fourteenth

amendment are absolute. This is a case where they refuse to permit a person, a candidate to be admitted to the bar, because he did not answer questions relative to communist activity. It goes on to 1007, Supreme Court. It says on the other hand general regulatory statutes are intended to control the contempt of speech, but incidentally limiting its unfettered exercise shall not be regarded as the type law the First and Fourteenth Amendment forbade congress or the states to pass. Then it goes ahead and cites *Cox versus the State of New Hampshire*, the case I just cited.

Certainly that is a recognition again by the Supreme Court that the municipality has the control of the streets so as to limit free speech, so as to require a permit to parade.

[fol. 445] Now, whether they can deny it in the case that they have, the defendants here have taken it upon themselves to decide, they can't deny it is something for the courts to decide, but certainly nowhere is it said you can refuse to speak for it. For aught they know, they might have gotten a permit, and the Supreme Court has said they can be punished and arrested for not getting a permit.

[fol. 446] Mr. McBee (Continued): In *McCowin versus State of Maryland*, just for the purpose of showing *Cox versus State* has been accepted by the Supreme Court of the United States, at page 1155 in *McCowin versus State of Maryland*—that is the page the citation is on—it says, "But see *Cox versus State of New Hampshire* in which the Court, balancing the public benefits secured by regulatory measures against the degree of impairment of individual conduct expressive of religious faith, which it entailed, sustained the prohibition of an activity similarly regarded by its participants as sacramental."

There is *Kronenberg versus State of California*, 81 Supreme Court 907. I believe the citation I read was at page 1155. In that same case at page 1016 it says, "These examples—" they were referring to a number of examples referring that there was no absolute right under the constitution—

The Court: I don't mean to stop you there, Mr. McBee, but didn't you cite last McCowin versus Maryland?

Mr. McBee: Yes.

The Court: And that was the one you were reading from?

Mr. McBee: That's right. McCowin versus the State of Maryland, 81 Supreme Court at page 1155. The case begins a few pages before it.

Now, turning back to Kronenberg versus State of California, another citation at page 1016 says, "These examples also serve to illustrate the difference between the sort of balancing that the majority has been doing and the sort of balancing that was intended when that concept was first accepted. The theme came into use chiefly as a result of cases in which the power of municipalities to keep the streets open for normal traffic was attacked by groups wishing to use those streets for religious or political purposes."

We submit under present law, the law of the Supreme Court of the United States, that the municipality has a right to enact such an ordinance and that that ordinance is valid under the decision and there is no excuse for a force of arms, so to speak, violation. The evidence shows no request to the governing body of the City for a permit, and as I said, the ordinance—it is indicated that they [fol. 447] attacked the ordinance as invalid—we submit from the outset these cases show conclusively the ordinance is not invalid, and the invalidity of it can be raised only by applying for a permit and testing any results resulting therefrom.

#### ARGUMENT ON BEHALF OF RESPONDENTS

Mrs. Motley: May it please the Court, the argument will be divided between myself and Mr. Greenberg, and I will review as briefly as possible the State's testimony in this case.

Now, Your Honor knows the State's burden in this case is a very heavy one. They had a duty of demonstrating to

this Court beyond a reasonable doubt that these respondents had violated the injunction order of this Court.

I would like to direct Your Honor's attention to pages 87 and 88 of the transcript. I believe Your Honor has a copy.

The Court: I don't have one, but I will get one.

Mrs. Motley: I will read it, Your Honor. I just want to check the page. Yes, it is 87 and 88. At this point there was the representative of the Alabama State Public Safety Commission testifying, as Your Honor will recall, and he said that he appeared at a church here in Birmingham on April 12th and he carefully observed what was going on, and it is obvious from his position that he is a person who is trained to observe conduct of individuals, to observe that conduct to see whether there is any unlawful action being done by the individual whom he is observing, and therefore I think his testimony in this case is very important. He was asked to describe what he saw, the line and so forth, and he said in answer to the following question at page 88, he was asked:

"Will you describe this line, just how the line was formed?"

And his answer was this:

"It would be extremely hard to, and there again, to establish exactly who was in a planned march, if there was such a thing, because so many people began moving along together."

Now, I think that summarizes the testimony put on by [fol. 448] the State in this case with respect to the two marches about which there has been testimony; that is, the march on Good Friday and the march on Easter Sunday. If you will read the testimony of the officers who observed those marches, as the Public Safety representative testified, it was very hard to say what was going on because there was this crowd there that followed along and intermingled with the people who had left the church in an apparent attempt to take a walk somewhere. And, as he said, he

could not tell whether this was an organized thing or whether these people were just coming out of the church.

In other words, the State has not sustained its burden of showing that these respondents have engaged in any unlawful marches or parades as was enjoined by this Court.

Now, as I read this Court's injunction, this Court did not intend to enjoin any lawful parade or marching from a church; it intended to enjoin only unlawful conduct. Well, the State failed to show that what any of these respondents did was unlawful.

Now, they make a great point of the fact that the persons who were marching on Good Friday and Easter Sunday did not have a permit. Well, I think the evidence is clear that what happened here was on April 3rd Rev. Shuttlesworth sent Mrs. Hendricks, who testified, as you recall, this morning; that she went to the City Hall for the purpose of obtaining permits for picketing and parading by the Alabama Christian Movement for Human Rights. She spoke to a police officer and he referred her to the Commissioners and she went to the office of the Commissioners and she was met by the door by Bull Connor—and this is uncontradicted—and he told her he would not give her a permit for anything, he would picket her to the jail.

Now, they didn't stop at that, as the evidence shows. The evidence shows they then sent telegrams to responsible City officials. They sent a telegram to Commissioner Connor and Commissioner Connor replied that you have to refer it to the whole Commission. Well, he was a Commissioner, and as a responsible public officer obviously his duty was to take it up with the Commission, but he didn't do that.

In addition, they sent a telegram to the Chief of Police, [fol. 449] another responsible City official. Here are people making a proper request for a permit and these responsible City officials doing nothing about it.

Now, the other thing in this case which the City sought to demonstrate was that these respondents violated this

court injunction by making certain statements. If Your Honor will read the statements allegedly made by these respondents, Your Honor will see that what these people were saying, what they really meant by these statements was that they would not be stopped in their lawful protest against segregation. Now, there is no question in this case that what the respondents were doing by all their activity was protesting against the State's policy of segregation. You will remember that we offered to prove by one of the respondents yesterday that this was the whole purpose of the Alabama Christian Movement. When Mr. Painter was on the stand his testimony sustained that this was a protest group, as he says, a Negro organization, a protest group; that their theme is nonviolence and that what they seek is the elimination of segregation. When all these statements made by the defendants are read together it is clear that all that they were saying is that we have started this peaceful protest against segregation and we will not be stopped in that peaceful protest. And I think their statement attached to the complaint of the City makes it clear that this is all that they had in mind—not a general defiance of law—but that they were determined to carry forward this protest against segregation, and I think Your Honor knows that this is a proper and legitimate objective of any group, to protest peacefully against a State policy, considered unconstitutional or objectionable by those making the protest, and that is all that this was about and that is all that their statements amount to.

[fol. 450] Mrs. Motley (Continued): Now, specifically as to the testimony of Officer Heley—Inspector Haley. Inspector Haley says that on April 12th, which was Good Friday, he believed that about fifty-one marchers were arrested, and Your Honor may recall that the Chief of Police testified that on both occasions, Good Friday and Easter Sunday, there were in the neighborhood of eighty officers at these meetings. Now, it is clear I think to the Court that if there are eighty officers at a scene and there

are more than fifty violating the law or even marching or walking that eighty officers would have been able to apprehend and arrest more than fifty people. Now, he identified Dr. King and Dr. Abernathy as leading a march on April 12th, but there is not a shred of evidence in this record that either Dr. King or Dr. Abernathy did anything which was unlawful. I am sure that this Court does not believe that walking down a public street on the sidewalk is an unlawful activity which a court of equity might enjoin.

Now, on Easter Sunday Inspector Haley said that he saw the Rev. A. D. King at the head of a line. Well, what testimony is there in this record that the Rev. A. D. King was doing anything unlawful? He saw him at the head of line. Is that an unlawful activity? Now, he says on Easter Sunday there were about twenty something actual arrests. There are eighty officers on the scene, twenty people arrested. Now, it is obvious, as I said before, with eighty officers on the scene that there were more than twenty marchers in that group and those eighty officers, as highly skilled and trained as they must be, would have been able to apprehend more than people persons.

Now, the evidence here is that on both of these occasions, Good Friday and Easter Sunday, there were crowds of people gathering at the churches where these marchers started. The police were fully aware of it. In fact, Inspector Haley, I believe it was, testified that there were officers there several hours prior to any attempted march or pro-[fol. 451] cession or walk. The officers observed the crowds, they knew exactly what was taking place. With eighty officers in the street of Birmingham I am sure Your Honor will agree with us that that will attract a crowd. But these officers, as the testimony here shows, didn't do anything at all about dispersing these people, getting them out of the area. If they really believed that the crowd was such that it could not be controlled, that these people were really going to engage in unlawful conduct, I am sure this Court could properly assume that the officers would have removed that crowd from the area and would not have permitted

them to congregate. But, as one of the officers testified, these people weren't doing anything but standing there. They were curiosity seekers. They saw eighty policemen around a Negro church and obviously they were going to look on to see what happened. When the orderly procession came out of the church of twenty, or at the most fifty, people, this crowd was allowed to intermingle with these marchers and the officers then testified that this was a procession. Well, obviously it wasn't. Obviously these people were just on-lookers and following the procession to see what would happen to them, to see whether the police would arrest them, and see what was going on.

The State has failed to prove that this crowd, as they claim, was organized by these respondents, brought there by these respondents for the purpose of creating a disturbance. And there is not a single piece of evidence which would sustain any such allegation—this is what these respondents did—brought this mob there.

Now, Inspector Haley was the one who testified first I believe that on April 12th there were two unidentified Negro men arrested for throwing rocks. Now, if any of these defendants had thrown any rocks, it certainly hasn't been shown in this hearing. Moreover, there has been no connection shown between those who threw the rocks and these respondents. Now, as I understand it, these two rocks were thrown and then there were three or four pieces of [fol. 452] mortar thrown, again, by unidentified persons unconnected with these respondents, and this is the only evidence in the record, as I see it, of any violence, even if it could be attributed to these defendants, which it clearly is not. This is the only evidence of any violence. These people were promptly apprehended.

Now, as to whether these defendants obstructed traffic by their activities in the City of Birmingham, Inspector Haley testified that they did not violate traffic signals. That is on page 23. He testified that the police had blocked vehicular traffic and not these defendants or respondents. The police had cut off an area to the traffic, so, there was no traffic violations by these respondents.

He was also asked how they were walking and he said on Good Friday they marched in two's, those that he saw. Then he said they came down the sidewalk and the sidewalk was so narrow that it couldn't hold more than two people on the sidewalk. Now, he was asked whether these marchers pushed anybody off the sidewalk. That is on page 26. He said that they didn't push anyone off the sidewalk. That is on page 26. He said they didn't push anyone off the sidewalk. He was asked whether they used any profanity. He said they did not. In other words, he made it clear by his testimony that these respondents were orderly and the only thing that this Court sought to enjoin was disorderly conduct or some other unlawful conduct. So, the State itself through its own testimony has established that these people were perfectly lawful, perfectly orderly.

Now, Inspector Haley testified he heard on the television that Rev. Abernathy said they were going to jail. Now, the State's burden in that respect was to show that what Rev. Abernathy meant or said by that statement was that he was going to do something in violation of this Court's order. Now, as the examination brought out, this statement doesn't make it clear at all what Rev. Abernathy meant by that. He may have been saying he was going to [fol. 453] jail to visit those that had already been put in jail for picketing. He could have meant he was going to jail to talk to the Chief of Police about a permit. In other words, it isn't clear at all what he meant by that statement, and the State had the burden of showing what he meant by it and that was that he meant he was going to jail as a result of having specifically violated some order of this Court.

Now, Inspector Haley was the one who testified he didn't see Wyatt Walker in either of these marches, and he, as a matter of fact, on Good Friday didn't see Shuttlesworth in the group. But, to sum up Inspector Haley's testimony, he ended by replying to a question from Mr. Shores that law and order was maintained. Now, that, as I say, establishes conclusively that whatever these respondents did on

Good Friday was lawful and orderly. There was by Inspector Haley's own testimony no disorder. Law and order was maintained. There was no one violating any law.

Now, the next witness for the State was a newspaper man by the name of Johnson. Mr. Johnson's testimony was that he attended a news conference in which Rev. M. L. King was present, Dr. Abernathy, and Rev. Shuttlesworth. Now, I think Your Honor has a copy of the statement which was later identified by a police officer which was handed out at that press conference, and as I said previously, if you read that statement you will see these respondents made clear that they did not intend to just violate the order of this court without any consideration at all as to its validity and so forth. What they were really saying was that we are protesting against Alabama and Birmingham's policy of segregation and we don't intend to be stopped in that protest, and that what we are doing is perfectly lawful, and that if this injunction intends to enjoin our lawful activity, this is what we are saying is wrong with it, it is a method of keeping us from protesting against segregation. But I think if you read their statement it is clear that they were not openly defying this Court, as the City would have this Court believe.

[fol. 454] Now, Mr. Johnson testified he heard the respondent—or he wasn't a respondent as I think we showed yesterday—but he heard Rev. Bevel make a sermon. Well, I don't think this Court intended to enjoin any person from making a public speech, and certainly not a sermon in a church, and this is the only testimony, as I see it, in this record regarding the Rev. Mr. Bevel, that he made a sermon which he explained yesterday to the Court.

Now, another thing which Mr. Johnson heard at a meeting which he attributes to Rev. King, is that Rev. King said, "We must love all white persons, we must love even Bull Connor." Now, I think that this is clear that Rev. King was trying to express the attitude of his group toward the white citizens here in the City of Birmingham. I don't think that there is any evidence at all that what he was

trying to do was stir up hatred against the white people in this city, as the city would have this Court to believe, or that they were conspiring to do something illegal. Certainly that statement, which I think summarizes what Dr. King said at that meeting, "We must love the white people of Birmingham, even Bull Connor" means that they intended not an attitude of defiance even against people that they considered their enemies, but an attitude of conciliation and love and negotiation, and everything he said at that meeting comes down I think to that final statement which he made.

Now, the only statement attributed to Rev. Abernathy at this meeting on April 11th, which Mr. Johnson attended, was the statement to the effect that Rev. Abernathy said he didn't like white supremacy or black supremacy or any other kind of racial supremacy. Here again is a clear indication that what Rev. Abernathy said to the group was that he was opposed to segregation or hatred against any group of any kind, and that statement I think proves it conclusively that this was his attitude toward the situation which they were trying to remedy. They were trying to do away with racialism, whether it was racialism on the part of [fol. 455] white or racialism on the part of Negroes, and his attitude was not one of defiance and not one of trying to do something unlawful.

[fol. 456] Mrs. Motley: Now, as to Wyatt Tee Walker, Mr. Johnson said that Wyatt Walker attended this meeting on April 11th, and that Wyatt Walker called for a meeting of the students on Saturday morning. Now, I don't understand that this Court enjoined any meeting, and I don't understand that the calling of a meeting of students is unlawful, and that is all this record shows, that Wyatt Walker called for a meeting of students.

And then there was some statement attributed Wyatt Walker that these students could get a better education in jail than they could in these segregated schools. Well, I think, again, it is not clear at all what Wyatt Walker meant by this statement except that he was against speaking

about the question of segregation; and that what he had in mind by calling a meeting of students again was to protest against a policy of segregation.

Now, there is nothing, as I can see, to connect this statement with any unlawful conduct on the part of Mr. Walker. It was not even shown whether the meeting was, in fact, held, or what occurred at that meeting or what he urged the students to do or whether he merely addressed the students and talked to them about segregated schools.

Now, another witness for the State was Mr. Ware, the photographer, and I think from Mr. Ware's testimony and the pictures which were introduced by the City, it is clear that there were not hundreds of people participating in any march on Easter Sunday. Mr. Ware's testimony was that perhaps there were fifty people who took part in a parade on Easter Sunday. That is on page 97.

Now, he was right there taking pictures, and contrary to what the City would like this Court to believe, there were not hundreds of people participating in a march on Easter Sunday.

Now, there were some other respondents in this case, and I think the evidence as to these other respondents shows that they were arrested. The State, I think, even failed to show what they were arrested for, what they were doing at the time they were arrested except walking on the public sidewalk. An officer, City Detective, rather, Harry L. [fol. 457] Jones, testified that he talked to some of these respondents after they were arrested; A. D. King, Respondent Smith, Porter, and Hays, and that they said to him that they had knowledge of some injunction. That is his testimony. But again the State failed to show that these persons had knowledge that any activity which they engaged in had been enjoined, that they even seen the injunction.

The testimony was that four of these respondents who were in jail were served after they were in jail. They had no knowledge of any injunction pointing to them, and all the State showed, as far as I can see is that they were in

jail and that is all. So I think the State has wholly failed to sustain its very heavy burden of showing that any of these respondents engaged in any unlawful conduct of any kind.

Now, among the things which this Court enjoined were unlawful boycotts. There is no evidence in this case of any unlawful boycott. This Court enjoined unlawful trespasses on private property. There is no evidence in this record to support that—that this was done by any of these respondents, that is.

This Court enjoined unlawful picketing. There is no evidence that these respondents engaged in any picketing. Another thing which this Court enjoined was violation of ordinances of the City of Birmingham. Now, the only ordinance which the City claims was violated here was an ordinance requiring a permit for a parade or a demonstration, and as I said earlier, the evidence is clear that these respondents sought such a permit on more than one occasion by sending someone to the City Hall and that was denied and Rev. Shuttlesworth sent a telegram to the Commissioner Connor to which he replied to the City Commission, and in addition a telegram had been sent to the Chief of Police.

Now, I think it is clear that these respondents had no intention of violating any of those ordinances of the City of Birmingham because they made several efforts to secure a permit as required, and it was denied.

[fol. 458] Now, another thing which this Court sought to enjoin was kneel-ins in churches. There has been no evidence that these persons engaged in any kneel-ins and marches contrary to the wishes of those holding services in churches. The only thing which the City has sought to prove is that on Good Friday and Easter there were illegal marches, as they call them. There was no permit, and as I have said, they have failed to demonstrate that what actually took place or what was attempted was illegal. Certainly the evidence was that they were orderly; that they

march down the street in twos; and that they did not use profanity.

They pushed no one off the sidewalk. The evidence is clear that what they did was to simply walk in an orderly fashion and they were intercepted by the police and arrested and charged with parading without a permit. That is all the evidence there is in this case. And in addition there is the evidence regarding this press conference at which the statement which Your Honor already has was made clearly indicating a desire to respect the law and clearly indicating that all they had in mind was a protest, a peaceful protest against a State policy of segregation.

I think the testimony the Chief of Police and the others in summation proves that the conduct of these respondents was entirely lawful. They testified that even though the crowd was large and a couple of rocks were thrown, they were, at all times, able to maintain law and order. They did not need any outside help. They had eighty policemen. They were perfectly able to control the crowd and the only evidence of any disorder on the part of that crowd was the throwing of a couple of rocks.

And I say again that the State has failed in every respect to show that any of these respondents have done anything which violates the injunction order of this Court. Thank you.

The Court: We will take a five minute recess.

(Brief recess taken.)

The Court: All right.

Mr. Greenberg: May it please the Court, I intend to argue [fol. 459] some of the law involved in this case and argue it briefly. The legal principles applicable here are many, applying to the case from many different angles and we would respectfully ask the Court for an opportunity to file a brief within a time that the Court may set as soon as it may be agreed among the parties so there will be no delay and so the Court can be adequately briefed on the issues as we feel it should.

Fundamental to the difficulties in this case is the fact and issue of racial segregation in the City of Birmingham. But even more fundamental in this case are the freedom of speech and freedom of assembly and freedom of the association question that the case involves.

Now, the United States Supreme Court just several weeks ago decided a case which, while not involving the alleged violation of an injunction, involved facts which are similar to this and this is the case of Edwards against South Carolina. Now, in that case 187 Negro students marched to the State House lawn in Columbia, South Carolina. The situation was much like this one. There was no question of a permit involved. There was no ordinance involved. There was no injunction involved, but what I am talking about is the principle of what is involved in such a case and Mr. Justice Stewart, in reversing the conviction of the Supreme Court of South Carolina, said that this was the exercise of free speech rights in its most pristine form. And in one of the occasions I think it is stated that some of the petitioners were marching down towards the City Hall and the fact that this is a free speech issue seems to me to be absolutely incontrovertable and the fact that large numbers of people parading to protest racial segregation, parading to bring this to the attention of governmental officers is the exercise of free speech rights in their most pristine form as applicable to this case as well as to the case of Edwards against South Carolina though recently decided by the United States Supreme Court and I might add that two weeks after that the Supreme Court on the authority of Edwards reversed another conviction of the Supreme Court of South Carolina, the case being Fields against [fol. 460] South Carolina, and reversed.

Now, the issue in this case is not whether a march or a demonstration or speech can be punished if for somehow or other or for some reason or other it is conducted in violation of how as in Cox against New Hampshire where actual punishment was applied. I think everyone agrees

that if the respondents in this case were in violation of the City Ordinance or in violation of the law and we don't concede that they are—in fact, we submit that on this record they are not, but if they were they could be subsequently punished. The big issue in this case is shall it be subsequent punishment or prior restraint, and I think the United States Supreme Court has, on enumerable occasions, said that even on a speech activity or what is called "Speech-plus" may be punished. It cannot be restrained in advance.

In other words, there may be a prior restraint. Now, there are enumerable cases on this, Mear against Minnesota, a criminal liable case, and Minnesota was publishing statement that were allegedly criminal liable, and its publication wasn't enjoined. There was no question that criminal liable may be punished or that damages may be assessed in a liable suit. But the United States Supreme Court said it may be enjoined.

It may not be restrained prior to publication. It may not be restrained in advance. There is a case that is, I would say, on all fours with this case.

The United States Supreme Court decision of Thomas against Collings, in that case an organizer for the United Auto Workers went to Texas, and in violation of the City Ordinance, did not obtain a permit to address the workers. A temporary restraining order was entered against him as has been entered in this case. He spoke in violation of that temporary restraining order. He was found in contempt of court.

The issue in this case was should he have been held in contempt of court for violating an order even if the order were void. The United States Supreme Court held the order void and it also reversed the adjudication of contempt. [fol. 461] Now, if I might I would like to read a few words from the decision in Thomas against Collings. The Court held there was restriction upon Thomas' right to speak and the right of the workers to hear what he had to say. There

can be no doubt the threat of the restraining order backed by the tower of contempt and of arrest for crime hung over every word.

But in reversing the conviction the Court held, "The restraint is not small but it is considered what was restrained. The right is a national right, federally guaranteed. Speech and assembly by all citizens of the public may be exercised throughout its length and breadth, but no state altogether nor the nation itself can prohibit, restrain, or impede if the restraint were smaller than it is from pity that large ones take root and grow.

This fact can be no more plain than we are imposed upon and the most basic rights of all. Seedlings planted in that soil grow great and growing break down the foundations of liberty.

Now, if I am correct, I gathered from Your Honor's statement at the outset of the case that Your Honor deems the decision of the United States against the United Mine Worker's at some hearing on this situation and we respectfully submit that it does not. There were nine judges sitting in that case and five opinions were written by those nine judges. Of those nine judges only two judges held that the order was void and the adjudication of contempt was valid. Justices Black and Douglas held that it was a valid order and there was a valid finding of contempt. Justices Murray and Rutledge held it was a void order, and therefore the adjudication of contempt was void.

Justices Vincent and Reed and Burton held that it was a valid order and the adjudication of contempt was valid, although they stated in a dictum that if the order were void the adjudication of contempt would be valid, but that is a dictum. But only two of the nine so held and the United States Supreme Court, prior to the United Mine Workers and Thomas against Collings, and subsequent [fol. 462] to the United States Mine Workers in at least two cases, United Gas, Coke and Chemical Workers versus Wisconsin Employment Relations Board 383, and in the

matter of Green, 369 U. S., 89, has reversed adjudications of contempt when the order upon which they were founded was void.

So we submit that this is the exercise of a free speech right, and fundamental right in its proper pristine form, that if the order of contempt is void—that if the injunction order was void, as we urge that it is, then the order of contempt is also void and that the United Mine Workers case is not controlling but the federally protected constitutional rights of free speech cases are the cases that control this situation.

This is only a small part of the law that might be argued in its connection and we would respectfully ask the Court for a brief of time that it might set so we may submit briefs on the matter.

The Court: Mr. McBee?

Mr. McBee: If it please the Court, how much time do I have?

The Court: Forty-five minutes.

#### REBUTTAL ARGUMENT BY COMPLAINANT

Mr. McBee: Let me comment just briefly on the questions that have been presented by Greenberg. The first point that we would discuss is United States Versus United Mine Workers in which the majority opinion was written by the Chief Justice Benson and in which opinion the statement is made following an earlier case. "Proceeding further, we find impressive authority for the proposition that an order issued by a court with jurisdiction over the subject matter and person must be obeyed by the party until it is reversed by orderly and proper proceedings. This is true without regard even for the constitutionality of the act under which the order is issued." And he cites two cases.

Now, Mr. Justice Frankfort subscribes to that principle very fully in his opinion which was, in one particular, a dissent, but in that particular respect he was thoroughly in accord.

[fol. 463] Mr. Justice Jackson joined in the opinion, except he said that he thought that the Norris LaGuardia act made to the issuance of the injunction unlawful, but all five of these gentlemen subscribed to the views—these members of the court subscribed to the views that are pronounced here.

Now, as far as I know, other than some decisions which refer to the possible matter of civil contempt, the fact of the ultimate outcome of the injunction, unless there is a complete and total and obvious usurpation of authority by the trial court, the sole and the only requirement is that the court of jurisdiction of the parties in the subject matter and the right as a matter of general law to issue injunctions.

Now, in this case Your Honor has jurisdiction as a court of equity and certainly is vested by that right by the statutes of this state. So, the question is did Your Honor have jurisdiction and Your Honor did because Your Honor had a petition filed. Now, there was some argument made but the City of Fairfield has already been, so far as our own Supreme Court is concerned, it has been passed upon and does sustain the right to issue an injunction in a situation of this kind.

Now, I am very familiar with Thomas versus Collings also. I would like to comment on this difference between Thomas versus Collings in our situation. In Thomas versus Collings a public building had been rented and this man came to make one speech.

Now, they had an ordinance there, or statute, I have forgotten which it was now, requiring anybody that might wish to be an organizer or labor organizer to cause the labor people to join unions should have a permit before they came in as organizers.

And the Court specifically pointed out that he had a round-trip ticket that would take him back and he came, I think, one day, and he was going back the next two days, I believe it was, but there was no question about a street or the use of the street in the South Carolina case, the

[fol. 464] Edwards case. There is no problem similiar to our situation involved because there the group congregated without any question, without any—in other words there was no question of a permit or anything of that kind. They were there with the invitation of the authorities, and after they got there and they got on the State Capitol grounds some incident occurred and the police department then thought that they ought to be dispersed and the Supreme Court of the United States felt that they were possibly premature in dispersing this group and improperly arrested, I believe, for disorderly conduct, as I recall.

Now, that briefly covers the cases. I don't think I have read United States versus Gas, U. S. Gas & Coke and the Green cases, but so far as I know, the United Mine Workers have not been overturned unless it is quite clear and obvious that the Court is usurper, in the exercise of its effort to issue a so-called injunction, and that is not the case in our situation.

Now, I need to comment a little bit—I think the Court, perhaps, in analyzing this evidence now, the first speakers representing the respondents laid great stress upon the fact that these people were trying to comply with the law, that they had no intention and no purpose to do otherwise, and that they loved everybody, she said, that Rev. Martin Luther King loved everybody and loved Mr. Connor and the white people of all kinds, and they did not preach any sort of hatred or anything of that kind. Now, I want to dwell on that a little bit further, but before I do that I would like to say this, Your Honor.

[fol. 465] That is referring now—I want to comment on this case, Your Honor, because I think it is quite important, and that is ex parte Textile Workers Union of America, 89 So. 2d, Page 92, in which the Court is talking about this matter of the violation of an injunction and restraining orders. This particular situation arose in a labor dispute, but most of all the—I mean a great many of the cases in the Courts arose in that way, involving the various amendments of freedom of speech, and so on.

(Whereupon Mr. McBee read from page 92, 89 So. 2d.)

I think, may it please the Court, that all the way through, the tenure of this thing has been there never has been any intention to violate the injunction, they haven't tried to violate the injunction. Let's see, now—and that they had no intention to defy your Honor, they had no intention to do anything except the greatest respect for, Your Honor's Court, and Your Honor's order and decree, and all they wanted to do was just what they could do lawfully. I think that Your Honor should not be misled if that may have been the purpose, or may not have been the purpose. Certainly Your Honor should have in mind that there is more evidence other than the press releases, themselves, in this case.

Now, something is said about well, now, Rev. Martin Luther King on Good Friday, he wasn't leading a march. He wasn't going any where. What does he do, then? Let's see, now. Let's see what he declared he was going to do. Now, this is taken from the testimony of the young gentlemen from the United Press. It is Mr. Elvin Stanton, and here is the thing he said that Rev. Martin Luther King said at this meeting. Now, they have meetings every night following the—before and following, but we are interested in mostly following the injunction. "Injunction, or no injunction, we are going to march", and then he goes on, "here in Birmingham, we have reached the point that we can't turn back, and Bull Connor will know that an injunction can't stop us."

Now, not only that, but Rev. Abernathy, who was one of the officers in this movement, leaders, according to the tes-[fol. 466] timony of Mr. Johnson, the United Press reporter, what did he say on the very night when he got the injunction? He says, "Neither the injunction, or anything else is going to stop us." Now, what did Martin Luther King say to them on this when they were asking questions about it, about the press conference? Well, he said this: They asked him, said, "What are you going to do?" That

is what some of these press people said, and he said, and this is a quote, "We will continue today, tomorrow, Saturday, Sunday, Monday, and on."

Now, I asked—and here was a part about "Give me liberty, or give me death." That was Rev. Abernathy speaking. They all cheered, all cheered. Everybody in the whole crowd cheered in the background, according to the testimony, and this group that was immediately in the presence cheered. All right, let me see what else he said. What did Shuttlesworth say? Rev. Shuttlesworth: "They had respect for the federal courts, or federal injunctions, but in the past the state courts had favored local enforcement, and if the police couldn't handle it, the mob would." Now, I submit that that testimony is in the record. Now, what did he mean? What did he mean, "If the police couldn't handle it, the mob would"? All right, was he talking about that mob that gathered down there on Easter Sunday? Now, it rather a stretch of the imagination to argue to Your Honor that they didn't gather this group down there. In the first place—

The Court: Be quiet, please. We will have no talking, please.

Mr. McBee: In the first place, they put one of these defendants on the witness stand, and I asked the witness, I said, Didn't they call for volunteers to call and make—get all of the Negroes to come. That was on Saturday night when they made that call, and he said, "Yes". He said, "Yes, they did", on Cross Examination, and I couldn't get out of him how many he called, but he said that they did, and I asked this Reverend how did you happen to go down there, and he said everybody was going. Everybody was going. I asked Rev. Hays, "What were you doing [fol. 467] down there" and he said he had decided to go, everybody was going, and I said, "Did you go down there to march?", and he said, "Oh, he didn't know what he was going to do." That was Easter Sunday, "but I made up my mind that I was going to do whatever turned up at the present time," That isn't exactly the words, but that the

substance of what he said. He just went down there to take part, and he was going to take part in it. He didn't know what it was going to be, but it was going to be something, and he went down there for that purpose.

Now, there is something about this thing that doesn't ring completely true, in my humble opinion, and that is there has protests, and protests upon protests that we don't believe in violence, and yet—and yet here was this man, this organizer from Mississippi, a District Representative, or Regent Representative, I have forgotten his exact title, this man, James Bevel, he come over here. He said he heard about this injunction, about some rabble rousing, and he come over here, and he began to do some rabble rousing. He began to tell these people, he said, "You all are sick." I said, "What are they sick about?", and he said, "Well, because they don't have integration, that is why they are sick." I said—I questioned him, and I said, "Well, now, you are saying some things, some remarks about the police department." Now, this young gentleman, Mr. Johnson, has previously testified that he made some disparaging remarks about the police department. He said, "Oh, yes, he talked about them," and I said, "You didn't say anything good about them, did you?" and he said, "No, he didn't say anything good about them, I don't know anything good about them, all I know is bad." I said, you spoke about Commissioner Connor, and he said, "Oh, yes." Did you say anything good about him? No, I didn't say anything good about him. Well, what was his purpose? That was on Friday night before this thing, this great gathering of converted—that began a mob, and that was the testimony of Commissioner—from Inspector Haley. It was also the testimony of this reporter, Mr. Ware, that it was an unruly mob. All right, now, was that the mob that F. L. Shuttlesworth was going to gather together, and [fol. 468] what was the mob to do? Was it to defy the law, was it to promote and incite riots? Certainly, that influence is before Your Honor in this case. If the police can't handle it, then the mob can. That is what he said.

Now, let's go a little further. After they had the thing going, you talk about they didn't gather that group together, they didn't have control over it. Well, Wyatt Tee Walker said—he was talking to this witness, who was also a capable witness, this law enforcement man from Montgomery, Mr. Painter, and he says, Mr. Painter says, he said to Wyatt Tee Walker, he says it looks like to me there is danger of somebody getting hurt here, and he says—and that was on Sunday, that was the very day that this violence broke out, the very day. Then, he said if you will control yourself and the police as well as I can control this crowd, there won't be any problem. I guarantee I can control these people. All right, a tremendous crowd of people, estimates up as high as two thousand, and he says he can control them. All right, was it their crowd that was there? Just remember, Your Honor, a couple of important additional bits of testimony, and that is that, as I mentioned a moment ago, there was no question but that they gathered this group, they were gathering a large crowd. There was also no question whatever about the fact that Wyatt Tee Walker came out and organized this group that was outside of the Church, outside of the Church. Now, that was what Mr. Painter testified. He was right directly across the avenue from them when he was doing it, and when this group came out of the Church, I believe one of the witnesses said there was several hundred, everybody in the Church joined in, and evidently everybody else outside the Church, or thereabouts, joined in, because as the Exhibits 4, 5 and 6 of the City will show, there was a tremendous group involved; covering the entire street, the sidewalks, the entire area, and they were led by these preachers who were robed in, I think, black robes. I am not sure of the color.

[fol. 469] All right, now, what else about that crowd? After things had gotten so bad that they began to throw rocks, and strike this man, this photographer, and damage property belonging to the City, and narrowly missing other officers of the City, after that happened, then the Rev. Wyatt Tee Walker, he gives them a signal to circle the

block, circle the block, talking to this great, tremendous crowd of people, and they began to circle the block, in the palm of his hand. Now, I submit, may it please the Court, that the evidence in this case from this—from the witness stand in this case leads to an inference, to an inference that either—and I want to comment on one other bit of evidence, that either they had the intention of creating a tremendous tragic incident down there that day, or they were hoping to goad the Police Department, or someone else into creating an incident in order they might be on the press or wire for money raising purposes, or whatever purposes they might see fit to gain out of it.

And, this is very significant: on the night of the 12th, Good Friday night, when Mr. Bainter talked to Wyatt Tee Walker, Wyatt Tee Walker said I am very—we don't know what is the matter here. We haven't—that is my own way of putting it. His words were not exactly that, but I submit this is the essence of it. The Police Department hasn't engaged in violence. The Police Department hasn't engaged in any violence. They have tried to protect us, and he was very much disappointed that something hadn't happened, and we say, may it please the Court, that the direct, the immediate inference to be drawn from this testimony is that that is exactly what they were wanting to do, and if they are permitted to do so, that is exactly what they will wind up by doing. That is why, may it please the Court, that we appealed to Your Honor to give this injunction, and that is why we are appealing to Your Honor to sentence each and every one of these defendants who are in this case for contempt, and that Your Honor take appropriate action to have these defendants to specifically declare that they do have some respect for the law, whether they like the law, or not, whether they like the courts, or not, and whether they like Your Honor's order, or not. Your Honor [fol. 470] is entitled to the respect and dignity of a tribunal of law, and if the time ever comes when a group can make up its own mind, and that seemed to be the theory of the whole defense, these people must make up their own minds.

what they can do, and what they can't do, and they talk about telegrams to Chief Moore and to Commissioner Connor, and one of the telegrams, they say we want to picket, and I believe the witness, Hendricks, testified she went to see Commissioner Connor, or met him in his office, or at the office, and he said he wasn't going to give any permit to picket. I believe that is what she said, but Commissioner Connor, in response to the telegram that was sent from the Movement, signed by Shuttlesworth, sent back a reply that that matter is in the hands of the City Commission as to whether or not a permit is granted. Was any request made for a permit? No. Did they want to have any permit issued? I submit they did not.

What did the Rev. Abernathy say on this night before the Good Friday parade? He says I am happy now, because I am going to jail tomorrow. Rev. King and I are going to jail tomorrow. Well, does that sound like they were going to go to visit some jail, some people in jail? They introduced these people that come out of the jail, and that is a mark of distinction, the fact that they had been in jail. Yes, twelve of them—twenty of them, I believe, was introduced one night, twenty of them introduced one night, and Rev. Abernathy was so happy he was going to jail. Now, did he expect to go to jail without violating the law? Of course, he didn't, and he didn't want to comply with the law, he didn't want to apply for a parade permit, or procession permit. He didn't want to respond to the lawful procedures, but he wanted to decide for himself what to do, and the telegram that was introduced there to Chief Moore, what did that say? Did that say give me a permit? No, it didn't say that. It said I am telling you what I am going to do. I am going to decide. Now, that is just the whole thing that is wrong with all of this business we have got here, and that is it is obviously a decision in their minds that they want to do what they think they ought to do, and it doesn't make any [fol. 471] difference whether it is lawful, or unlawful if they decide that they want to do it, and it meets their convenience, or seems to be to their best interest.

And so again we submit, may it please the Court, that in this case the Court ought to speak strongly and clearly that they can't get by with this kind of incidents. After all, this is a government of law, it is a government of order, and if ever we get away from that, then we are in chaos, we are an anarchy, and as has been so carefully said, and I believe Mr. Brackenridge quoted that the reason why it is necessary to abide by the law is that the law is the source of protection not only for the fellows who think it might be right to ignore it for a time, but in the overall, a movement of society of obedience to the law is required, and it is a must.

I just want to say one or two words about the Rev. Bevel, one or two more words. Now, the evidence is that he spoke on this Friday night meeting, he spoke on the night that Wyatt Tee Walker says he—Mr. Johnson said every night they called for volunteers to go to jail. Now, for them to go to jail, as some people over here have said, is it to go to jail to see Commissioner Connor, or go to jail to see Chief Moore? Well, that wouldn't be the place they were going to be anyway. You mostly can find them down at the City Hall. You wouldn't go to jail to see them. Nobody over there but the warden, and people in jail, and the people that have them in custody. Were they going over to the jail to see somebody, or see something? Was that the reason they were going to jail? Well, it doesn't sound very logical, because they were calling every night for volunteers to go to jail, and they were holding up these people that had been to jail as examples of I don't know what, but I suppose to encourage the others to want to go to jail, too, and how were they going to get in jail? They knew they were going to get in jail if they violated the law. That is how they knew. They knew they would, and they did, and so, may it please the Court, with reference to the words of the Rev. James Bevel, I am not—I think he said he was a reverend. He admitted he came over here because he [fol. 472] knew about the injunction. He came over here, and he gave this inflammatory talk, and then he said he

asked them to rise up and walk, and I said you meant by that that you wanted them to join in these activities, or these demonstrations, and he said, yes, that is what I meant, that is exactly what I meant.

Now, the injunction, what does the injunction say? It says—now, remember this: we have this other leadership conference as a party defendant, and also the Human Rights group. It says, "The respondents, and others identified in the bill of complaint, their agents, members, employees, servants, followers, attorneys, successors, and all other persons in active concert or participation with the respondents and all persons having notice of said order from continuing any action hereinabove designated, and so on, and so forth.

All right, was this an ongoing movement? Was this a mass attempt to defy Your Honor's injunction? It is perfectly obvious it was, perfectly obvious, meeting after meeting on night after night calling for volunteers, volunteers to go to jail, and then finally on Friday night, volunteers to die. All right, all right, what did that mean? What did volunteer to die? Did that mean we are going to have some volunteers here on some other date who will precipitate some trouble and possibly goad somebody in the excitement of getting killed? Is that it? Maybe the ones that start it may be the ones to get killed. But, surely there is nothing about a peaceful movement that I know of that needs any volunteers to die. That kind of an organization may speak with a one tongue and may move with other feet, and I say, may it please the Court, that Your Honor is justified in this case from the evidence to reach that exact conclusion in this case, and we do ask Your Honor to find these defendants, each of them, guilty of contempt.

Now, some mention about the fact that maybe they didn't get served. Well, that isn't necessary. Speaking now, the National Labor Relations Board against Blackstone, which Judge Hard, a circuit judge was writing the opinion, one 23 Fed. 2nd. At page—it starts on page 633, and it ends [fol. 473] on page 635. Judge Hard says: "That there is

no doubt that this is the law," speaking of the contempt citation against a defendant who was not a defendant to this suit, not in the original injunction, but acting in concert with that defendant. "There can be no doubt that this is the law. Actually, I have always treated as carsination those who take an actual part in the defendant's own violation of the injunction, provided they have notice of the decree."

Every last one of these people said they knew about the injunction. All right, are they entitled to act without informing themselves when they know about the injunction?

Well, reading from this, and I am not certain of the man's name, D-a-n-g-e-l. How he pronounces it, I am not sure, but he says this: "That the ignorance of the law, or the ignorance of the injunction is not available as a defense where he knew about the injunction and deliberately failed to ascertain its terms." That is page 178, Your Honor. The law doesn't permit a defendant allied with a group of defendants such as this to participate in the activities, and bear in mind on the night that Rev. Young spoke down at that meeting, on that very night when he was urging them to all become participants, and to come and join in their activities. He says to keep it going. He says we have got the movement going, we have proven it is a great movement. Now, can we keep it, can we keep it going. That very night—Your Honor must bear in mind that the testimony comes in the context in which it follows, and the background in which it occurred. What were they doing down there that night? Well, that was the night they were—that was the Friday night that they were imploring volunteers to die. They were also imploring volunteers to go to jail. Rev. Wyatt T. Walker was active just about here, and there, and everywhere. Executive director, I believe the testimony shows, of the whole works. The planner—not the planner, no, I don't guess that's right, but the strategist, the decision maker. Did Wyatt Tee Walker do anything? Did he do anything? Well, it seems to me that

he was the man behind the scenes in all of this thing. You [fol. 474] can see him all through it everywhere calling on people to die for him. What right has a man got to make a call of that kind?

We submit that under all the evidence and all the law each of these defendants before Your Honor at this time, without question, without doubt, beyond all shadow of any doubt, are guilty of contempt, and they should be so held, in our humble opinion.

The Court: The Court doesn't consider the necessity of any further briefs in reference to the law in the case. The motion to that extent would be denied, and the case is adjourned until Friday morning at 9:30.

(Whereupon at 4:00 o'clock P.M., proceedings were adjourned)

[fol. 475] April 26, 1963

9:30 a.m.

(The court was reconvened pursuant to adjournment.)

The Court: Before I read this decree, I understand there may be some motion you want to file on the record, or do you have it typed?

Mr. Greenberg: It is being typed at this moment. This is a motion reducing to writing our motion to exclude the evidence that we made at the conclusion of the trial. We hope you will allow us to file it this morning.

The Court: It is my understanding that motion has been overruled by the Court and permission is given just to reduce it to writing.

Mr. Greenberg: Yes, sir.

The Court: I think the purposes will be best served by the Court reading its decree that has been prepared in this case.

[fol. 481]

## COMPLAINANT'S EXHIBIT 1

(Identification)

MGR 7 (Q)

(Racial)

(Birmingham)—Southern Integration Leader Martin Luther King has recruited more than fifty volunteers for a Good Friday march on City Hall.

The march is scheduled to begin at noon . . . . Despite a temporary injunction order filed on King by State and Jefferson County authorities.

Negroes defiantly proceeded with anti-segregation demonstrations in Birmingham yesterday despite the Circuit Court Order restraining King and his associates from such racial protests.

Twenty Negroes picketing downtown steel city stores yesterday were arrested . . . . Bringing to 163 the total number of arrests in nine days of racial protest. None of the demonstrators were named in the court order.

King told a crowd at a church last night—and we quote—"Injunction or no injunction, we're going to march. Here in Birmingham we have reached the point of no return and now (authorities) will know that an injunction can't stop us."

A chief aide to King, the Reverend Wyatt Tee Walker, says "Knee-ins" are planned for Easter Sunday. Walker says the Negroes can pick whatever church they want for the Easter demonstrations.

CST

DMS44A4/12

**CORRECTION:**

—0—

Editors: The number of demonstrators arrested in Birmingham now totals 163. Please correct the third line of the first Alabama headline which moved on the last split (MGR1) to read XXX at least 163.

**UPI MONTGOMERY****DMS45A4/12CST****[fol. 482] MGR10 .****CORRECTION**

In racial story above (MGR7) read wire hits in the fifth pgh XXX And now (authorities will know that an injunction can't stop us." Picking up next pgh XXX A chief aide etc.

**UPI MONTGOMERY****4/12CST . .****DMS50A****T RAR**

## COMPLAINANT'S EXHIBIT 2

NEWS from

ALABAMA CHRISTIAN MOVEMENT FOR HUMAN RIGHTS  
505½ No. 17th Street  
B'ham, Ala.

FOR RELEASE 12:00 Noon, April 11, 1963

STATEMENT BY M. L. KING, JR., F. L. SHUTTLESWORTH,  
RALPH D. ABERNATHY, *et al.* FOR ENGAGING IN PEACEFUL  
DESEGREGATION DEMONSTRATIONS

In our struggle for freedom we have anchored our faith and hope in the rightness of the Constitution and the moral laws of the universe.

Again and again the Federal judiciary has made it clear that the privileges guaranteed under the First and the Fourteenth Amendments are to sacred to be trampled upon by the machinery of state government and police power. In the past we have abided by Federal injunctions out of respect for the forthright and consistent leadership that the Federal judiciary has given in establishing the principle of integration as the law of the land.

However we are now confronted with recalcitrant forces in the Deep South that will use the courts to perpetuate the unjust and illegal system of racial separation.

[fol. 483] Alabama has made clear its determination to defy the law of the land. Most of its public officials, its legislative body and many of its law enforcement agents have openly defied the desegregation decision of the Supreme Court. We would feel morally and legal responsible to obey the injunction if the courts of Alabama applied equal justice to all of its citizens. This would be sameness made legal. However the issuance of this injunction is a blatant of *difference* made *legal*.

Southern law enforcement agencies have demonstrated now and again that they will utilize the force of law to misuse the judicial process.

This is raw tyranny under the guise of maintaining law and order. We cannot in all good conscience obey such an injunction which is an unjust, undemocratic and unconstitutional misuse of the legal process.

We do this not out of any disrespect for the law but out of the highest respect for *the* law. This is not an attempt to evade or defy the law or engage in chaotic anarchy. Just as in all good conscience we cannot obey unjust laws, neither can we respect the unjust use of the courts.

We believe in a system of law based on justice and morality. Out of our great love for the Constitution of the U. S. and our desire to purify the judicial system of the state of Alabama, we risk this critical move with an awareness of the possible consequences involved.

FOR FURTHER INFORMATION—Phone 344-5944

Wyatt tee walker  
Public Information  
Officer

[fol. 483a] COMPLAINANT'S EXHIBIT No. 3

411

412

[fol. 483b] COMPLAINANT'S EXHIBIT No. 4

[fol. 483c] COMPLAINANT'S EXHIBIT No. 5

413

414

[fol. 483d] COMPLAINANT'S EXHIBIT No. 6

(See opposite) 



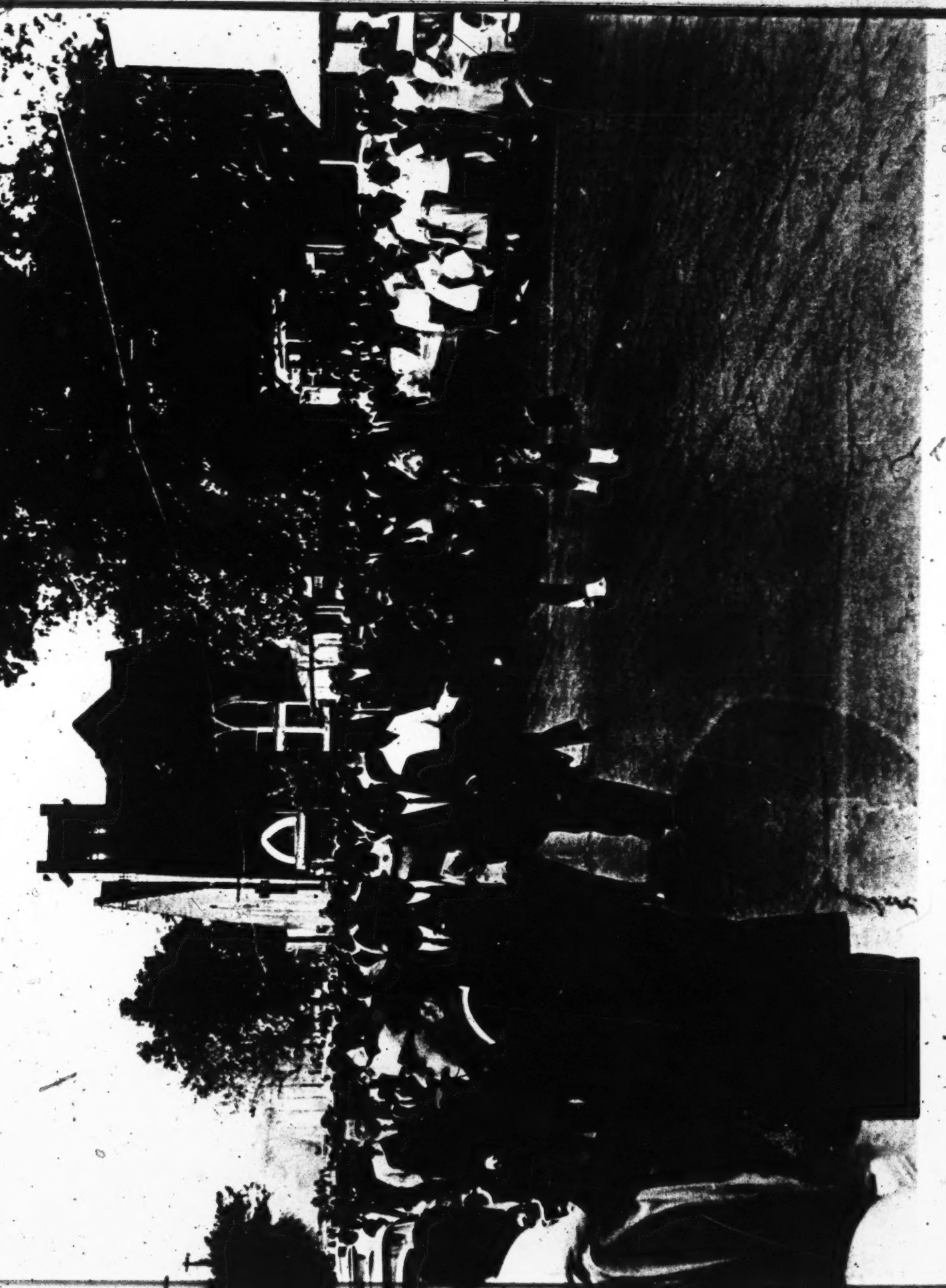














[fol. 484]

## RESPONDENT'S EXHIBIT A

## WESTERN UNION TELEGRAM

229P CST APR 5 63 NSD270

NS BMD128 PD FAX BIRMINGHAM ALA 5 214P CST

F L SHUTTLESWORTH 505½ N 17 St

ANS DATE BHAM

UNDER THE PROVISIONS OF THE CITY CODE OF THE CITY OF BIRMINGHAM, A PERMIT TO PICKET AS REQUESTED BY YOU CANNOT BE GRANTED BY ME INDIVIDUALLY BUT IS THE RESPONSIBILITY OF THE ENTIRE COMMISSION. I INSIST THAT YOU AND YOUR PEOPLE DO NOT START ANY PICKETING ON THE STREETS IN BIRMINGHAM, ALABAMA

EUGENE "BULL" CONNOR, COMMISSIONER OF PUBLIC SAFETY (26).

Bull to Billingsley

Ala. Code

1st Amendment

6 Amendment

Supreme Court So Carolina

## RESPONDENT'S EXHIBIT B

AS BHAM APR 5 1021AC  
69 PD 4 EX (CFN FURN)

EUGENE BULL CONNOR

POLICE COMMISSIONER CITY HALL

BHAM

DEAR MR CONNOR, THIS IS TO CERTIFY THAT THE ALABAMA CHRISTIAN MOVEMENT FOR HUMAN RIGHTS REQUEST A PERMIT TO PICKET PEACEFULLY AGAINST THE INJUSTICES OF SEGREGATION AND DISCRIMINATION IN THE GENERAL AREA OF SECOND THIRD AND FOURTH AVENUES ON THE EAST AND WEST SIDEWALKS OF 19 STREET ON FRIDAY AND SATURDAY APRIL FIFTH AND SIXTH. WE SHALL OBSERVE THE NORMAL RULES OF PICKETING. REPLY REQUESTED.

FL SHUTTLESWORTH  
PRESIDENT

NH SMITH SECRETARY

ALA CHRISTIAN MOVEMENT  
505 1/2 N 17 St BHAM

[fol. 485]

## RESPONDENT'S EXHIBIT C

COPY DO NOT SEND

PK BHAM APR 6

CHIEF OF POLICE JAIMIE MOORE AND  
POLICE COMMISSIONER EUGENE BULL CONNOR  
CITY HALL BHAM  
SHERIFF MELVIN BAILEY

COUNTY COURTHOUSE GHAM

324-5944

DEAR SIR: THIS IS TO ADVISE YOU THAT A GROUP OF NOT MORE THAN THIRTY PERSONS WILL ACCOMPANY ME TO CITY HALL FOR A BRIEF PRAYER SERVICE. OUR ROUTE IS AS FOLLOWS 5th AVENUE TO 19th STREET CROSSING TO THE EAST SIDEWALK THENCE TO CITY HALL TO FRONT PARAPET BLOCKING NO DOORS OR SIDEWALKS. WE WILL RETURN VIA 19TH STREET, 4TH AVENUE TO 15TH. WE SHALL DISPERSE AT 5th AVENUE NORTH AND 16th STREET. OUR GROUP WILL BE ORDERED ORDERLY. NO MORE THAN TWO ABREAST STRICTLY OBSERVING ALL TRAFFIC SIGNALS. VERY TRULY YOURS

F L SHUTTLESWORTH  
ALA CHRISTIAN MO  
505 1/2 North 17

Mail to 505 1/2 North 17th St

[fol. 486]

**RESPONDENT'S EXHIBIT D****(Identification)**

**Statement of Counsel Authorized by Respondents Wyatt Tee Walker, Ralph Abernathy, F. L. Shuttlesworth, and Martin Luther King, Jr., in Response to Order and Rule to Show Cause**

This court, on the 15th day of April 1963, Hon. W. A. Jenkins, Jr., Circuit Judge sitting in equity, ordered that respondents Wyatt Tee Walker, Ralph Abernathy, F. L. Shuttlesworth and Martin Luther King, Jr., shall publicly retract or recant statements made publicly at press conferences and mass meeting on April 11, 1963, of their intention to violate the injunction described in the petition of the City of Birmingham in the above-entitled case.

These respondents desire to clarify their position and publicly state to the court that they have had no intention of violating the law. Respondents intend only to do, and in the future only will do, the following acts secured to them by the Fourteenth Amendment of the Constitution of the United States:

1. Urge the citizens of Birmingham to assert and exercise their constitutional rights to protest peacefully against racial segregation.

2. Hold lawful meetings to urge their views upon the citizens of Birmingham.

3. Picket peacefully in lawful numbers and in a lawful manner and urge the citizens of Birmingham to make purchases in establishments from which they are not excluded or otherwise discriminated against on the basis of race.

4. Urge citizens of Birmingham to exercise their federal constitutional privilege to register to vote.

5. Urge citizens of Birmingham to attend church without regard to race.

6. Otherwise urge citizens of Birmingham to exercise their federal constitutional rights.

7. Section 369 of the City Code of Birmingham on its face requires proprietors to practice racial segregation in [fol. 487] eating facilities in contravention to the Fourteenth Amendment to the U. S. Constitution. Respondents have urged and will urge Negro citizens to exercise their right to equal protection of the laws under the Fourteenth Amendment to the U. S. Constitution by remaining seated in lunch counters and seeking service there despite the Birmingham Ordinance which compels proprietors to refuse service solely because the patrons are Negroes.

8. Respondents will not urge their follows to engage in mass picketing, block ingress and egress of places of business or engage in any violence.

9. Respondents will not urge their follows to congregate into mobs on streets or in public places.

10. Respondents do not intend to perform acts calculated to cause breaches of the peace.

11. Respondents have urged their followers to attempt to attend the churches of Birmingham on a non-segregated basis. In some churches Negroes were accepted and permitted to participate in the services with the regular member of the church. This was the sole aim of the Respondents. The Respondents have urged and will urge persons to depart from the church premises if refused admittance and in all instances in the past this suggestion has been followed.

[fol. 488] Reporter's Certificate (omitted in printing).

[fol. 489] DECREE ADJUDGING DEFENDANTS GUILTY OF CONTEMPT UNDER ORIGINAL PETITION TO SHOW CAUSE—April 26, 1963

This Cause coming on to be heard is submitted for decree upon the original petition of complainant to require the defendants, as named therein, to show cause, if any they

have, why they should not be found guilty of contempt for violating this Court's order which enjoined the original respondents as named in the bill of complaint and others acting in concert with them from doing said unlawful acts as prohibited therein.

The said petition charges the violating of the Court's order granting the temporary injunction by their issuance of a press release, a copy of which is attached as an exhibit to the petition, which release allegedly contained derogatory statements concerning Alabama Courts and the injunctive order of this Court in particular. The said petition further charges the violation of the said injunctive order by the defendants' participating in and conducting certain alleged parades in violation of an ordinance of the City of Birmingham which prohibits parading without a permit.

The defendants in answer thereto filed a general denial of the pertinent allegations as contained in the said petition of the City.

Evidence was thereupon taken in open Court upon the issues as raised by said pleadings. Upon conclusion of the evidence as offered by the city, the respondents' counsel moved the Court to exclude the evidence as to the following defendants: Ed Gardner, Calvin Woods, Aberham Woods, Jr. and Johnny Louis Palmer and to dismiss said defendants from said petition for failure of the city to offer proof upon which said defendants could be found guilty, and the Court, thereupon, granted said motion and dismissed said defendants. A like motion was made at the conclusion of the evidence as to the Defendant, Andrew Young, and was taken under submission; but the Court is now of the opinion that said motion should be denied.

The Charges cited in the said petition constitute past acts of disobedience and disrespect for the orders of this Court and the nature of the order sought would be to punish the defendants for their said acts of contempt and would, in the opinion of this Court, constitute this proceeding as an action for criminal contempt.

The defendants have assumed the position throughout [fol. 490] this proceeding that the acts for which they are cited are not unlawful acts and that they do not refuse to obey the lawful order of this Court, but that the acts which they have performed were those protected by the First and Fourteenth Amendments to the Constitution of the United States, the due process and equal protection clauses thereof, and by Article I, Section 25 of the Alabama Constitution; that the exercise of their constitutional rights under the above stated provisions were denied them by Section 369 of the 1944 Code of Birmingham; and that because of such denial of said rights, the order of this Court enjoining the violation of said ordinance was a void order for which they were not required to comply, citing as their authority, among other cases, that of *Thomas vs. Collins*. 65 Sup Ct 315

On the other hand, the City takes the position that the order of this Court granting the temporary injunction was an exercise of the authority of a Court of Equity over such subject matter and such individuals over which the Court maintained lawful jurisdiction. The City further takes the position that the said ordinance as it applies to these defendants requiring a permit to parade is on its face a valid and legal exercise of the police power; and that in order to attack its validity all the requirements of the said ordinance must be complied with or the defendants must make a showing to a duly constituted tribunal that a substantial compliance was attempted and the City was unreasonable and arbitrary in its denial of such requests. That before attacking the validity of this Court's order enjoining the violation of such ordinance, the defendants would be required first to seek to prove to the Court that such unconstitutional action in depriving the parties of a permit would amount to a violation of their rights and would require the City to issue such a permit. The City contends that the defendants made no valid attempt to secure a permit in accordance with the requirements of the ordinance; and that there is no evidence that if such request was made that the

permit would have been denied. The City cites as its authority for its position, among other cases, that of *Cox vs. State of New Hampshire* 61 Supreme Court 762.

It is the considered opinion of this Court that the principles and the law as enunciated in the case of *Cox vs. New Hampshire*, supra, is controlling in this cause; and that the [fol. 491] said ordinance is not invalid upon its face as a violation of the constitutional rights of free speech as afforded to these defendants in the absence of a showing of arbitrary and capricious action upon the part of the Commission of the City of Birmingham in denying the defendants a permit to conduct a parade on the streets of the City of Birmingham. The legal and orderly processes of the Court would require the defendants to attack the unreasonable denial of such permit by the Commission of the City of Birmingham through means of a motion to dissolve the injunction at which time this Court would have the opportunity to pass upon the question of whether or not a compliance with the ordinance was attempted and whether or not an arbitrary and capricious denial of such request was made by the Commission of the City of Birmingham. Since this course of conduct was not sought by the defendants, the Court is of the opinion that the validity of its injunction order stands upon its prima facie authority to execute the same.

Under all the evidence in the case, the Court is convinced beyond a reasonable doubt that the remaining defendants had actual notice of the existence of the prohibitions, as contained in the injunction, and of the existence of the order itself; and that the actions of all the remaining defendants were, in the opinion of this Court, obvious acts of contempt, constituting deliberate and blatant denials of the authority of this Court and its order and were concerted efforts to both personally violate the said injunctive order and to use the persuasive efforts of their positions as ministers to encourage and incite others to do likewise.

There has been no apology or indication whatsoever on the part of the remaining defendants to comply in the future with this injunctive order. Under these circumstances it must be expected that the full authority as allowed by statute must be exercised in order to protect the dignity of this Court of Equity and to enforce its lawful orders.

However, the Court feels compelled to urge upon the defendants to consider carefully their course of conduct in the future and the following words of Mr. Justice Frankfurter (from his concurring opinion in the case of the United States vs. The United Mine Workers of America 330 US 308) should be a guide to us all when considering the jurisdictional authority of a Court of law:

[fol. 492] "The historic phrase 'a government of laws and not of men' epitomizes the distinguishing character of our political society. By putting that phrase into the Massachusetts Declaration of Rights, John Adams was expressing the aim of those who, with him, framed the Declaration of Independence and founded the Republic. This phrase was the rejection in positive terms of Rule by Fiat, whether by the fiat of governmental or private power. Every act of government may be challenged by an appeal to law, as finally pronounced by this Court. Even this Court has the last say only for a time. Being composed of fallible men, it may err. But revision of its errors must be by orderly process of law. But no one, no matter how exalted his public office or how righteous his private motive, can be judge in his own case. That is what courts are for. And no type of controversy is more peculiarly fit for judicial determination than a controversy that calls into question the power for a court to decide.

"Short of an indisputable want of authority on the part of a court, the very existence of a court pre-

supposes its power to entertain a controversy, if only to decide, after deliberation that it has no power over the particular controversy.

"Whether a defendant may be brought to the bar of justice is not for the defendant himself to decide.

"In our country law is not a body of technicalities in the [fol. 493] keeping of specialists or in the service of any special interest. There can be no free society without law administered through an independent judiciary. If one man can be allowed to determine for himself what is the law, every man can. That means first chaos then tyranny. Legal process is an essential part of the democratic process. For legal process is subject to democratic control by defined, orderly ways which themselves are part of law. In a democracy, power implies responsibility. The greater the power that defies law the less tolerant can this Court be of defiance.

"This Court is the trustee of law and charged with the duty of securing obedience to it."

It Is, Therefore, Ordered, Adjudged and Decreed by the Court as follows:

1. That motion of Defendants, Ed Gardner, Calvin Woods, Aberham Woods, Jr. and Johnny Louis Palmer, to exclude the evidence as to said defendants and to dismiss said defendants as to this petition be and the same is hereby granted;

2. That the motion of Defendant, Andrew Young, to exclude the evidence as to him and to dismiss him as a defendant to the petition herein be and is hereby denied;

3. That the following defendants be and the same are hereby adjudged in contempt of this Court: Martin Luther King, Jr., Ralph Abernathy, A. D. King, Wyatt Tee Walker, Andrew Young, J. W. Hayes, N. H. Smith, Jr., James Bevels, T. L. Fisher, John Thomas Porter, and

F. L. Shuttlesworth, and all of said defendants shall hereby stand committed to the custody of the Sheriff of Jefferson County, Alabama, for a period of five consecutive days beginning at 10:00 A. M. on Thursday, the 16th day of May, 1963;

4. That the said defendants as herein adjudged to be in contempt be and the same are also hereby fined the sum of Fifty (50) Dollars each and upon failure of any defendant to pay the said fine so imposed, the Sheriff of Jefferson County, Alabama, is ordered to retain the custody of such defendant and that said defendant, thereupon, perform hard labor for said county for said fine at the rate of Three (3) Dollars per day not to exceed twenty (20) days;

5. That the taxing of costs in this proceeding is hereby reserved until such time as a hearing has been held as to the amended petition to show cause.

Done and Ordered, this the 26 day of April, 1963.

W. A. Jenkins, Jr., Circuit Judge, in Equity Sitting.

Filed in Office April 26, 1963.

## THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

## THE SUPREME COURT OF ALABAMA

October Term 1962-63

6th Div. 999

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THE CITY OF BIRMINGHAM, a Municipal Corporation,

vs.

WYATT TEE WALKER, et al.

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Jefferson Circuit Court, In Equity

ORDER GRANTING STAY AND GRANTING CERTIORARI—

May 15, 1963

To the Register of the Circuit Court of Jefferson County,  
Alabama, in Equity, Greeting:

Whereas, the following respondents, Wyatt Tee Walker, Martin Luther King, Jr., Ralph D. Abernathy, A. D. King, Andrew Young, J. W. Hayes, N. H. Smith, Jr., James Bevels, T. L. Fisher, F. L. Shuttlesworth, and J. T. Porter, in the above cause, did on May 13, 1963, file in this Court a Petition for Writ of Certiorari to the Circuit Court of Jefferson County, Alabama, In Equity, seeking a review of the decree of contempt entered in the above cause, and petitioners have suggested that a Writ of Certiorari issue to the Register of the Circuit Court of Jefferson County, Alabama, commanding and requiring him to make and certify to this Court a true and correct copy of the contempt proceedings in said Circuit Court, in the above cause, and

Whereas, the petitioners, in this Court, have filed for a [fol. 495] stay of execution of the decree of contempt, in said Circuit Court, pending the hearing of said Petition for Certiorari filed in said cause, and

Whereas, The Supreme Court of Alabama did, on to-wit, May 15, 1963, enter an order granting said Petition for Certiorari to said Circuit Court returnable within thirty (30) days from this date, upon the execution of security for the costs of the certiorari proceedings and upon the petitioners and each of them entering into an appearance bond in the amount of \$1,000.00 each to be approved by the Register of the 10th Judicial Circuit of Alabama.

Now, therefore, upon the petitioners, and each of them, making an appearance bond with good and sufficient surety or sureties, in the amount of \$1,000.00 each, to be approved by the Register of the 10th Judicial Circuit of Alabama, and upon filing security for the costs of appeal by Certiorari of these proceedings, you are commanded to make diligent search of the record and proceedings in your office in the above cause, and certify, together with this writ, a full and complete transcript of said above named records and proceedings to our said Supreme Court within thirty (30) days from this date.

Witness, J. Render Thomas, Clerk of the Supreme Court of Alabama, this the 15th day of May, 1963.

J. Render Thomas, Clerk of the Supreme Court of Alabama.

Upon compliance with the above and foregoing conditions, the execution of the decree and sentence imposed in the contempt decree is hereby stayed until the further orders of this Court.

J. Render Thomas, Clerk of the Supreme Court of Alabama.

Filed in Office May 16, 1963.

APPEARANCE BOND (omitted in printing).

[fol. 499]

IN THE SUPREME COURT OF ALABAMA  
Jefferson Circuit Court, in Equity  
6th Div. 999

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WYATT TEE WALKER, et al.,

v.

CITY OF BIRMINGHAM.

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ORDER OF SUBMISSION—August 22, 1963

Come the parties by attorneys and submit this cause on  
briefs for decision.

[fol. 500]

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

October Term, 1965-66

6 Div. 999

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Ex parte WYATT TEE WALKER, et al.

(In re: WYATT TEE WALKER, et al.,

v.

CITY OF BIRMINGHAM, a Municipal Corporation of the  
State of Alabama.)

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Petition for Writ of Certiorari to Jefferson Circuit  
Court, in Equity.

OPINION

Coleman, Justice.

We review by certiorari convictions of petitioners for criminal contempt for violating a temporary injunction issued by the Circuit Court of Jefferson County, in equity. [fol. 501] On April 10, 1963, the City of Birmingham, a municipal corporation, presented its verified bill of complaint to one of the judges of the Tenth Judicial Circuit. The bill prayed for temporary and permanent injunctions. The judge to whom the bill was presented ordered the temporary injunction to issue upon the City's making bond for \$2,500.00. The prescribed bond was filed and injunction issued out of the circuit court and was served on certain of petitioners.

The return of the sheriff shows that a copy of the injunction was personally served on petitioners as follows:

On Martin Luther King, A. D. King, F. L. Shuttlesworth, Wyatt Tee Walker, and Ralph Abernathy on April 11, 1963, at 1:00 a.m.;

On John Thomas Porter on April 12, 1963, at 4:13 p.m.;  
and

On N. H. Smith, Jr. on April 15, 1963, at 8:35 a.m.

We have not found a return of the sheriff showing service on the other petitioners who were adjudged to be in contempt. Notice to those not personally served is herein after discussed.

The injunction recites in part as follows:

"THESE, THEREFORE, are to temporarily Enjoin you Wyatt Tee Walker; Ralph Abernathy; Al Hibler; F. L. Shuttlesworth; Martin Luther King, Jr.; Aberham Woods, Jr.; Calvin Woods; A. D. King; Alabama Christian Movement for Human Rights by serving copy on Fred L. Shuttlesworth as President, and all other [fol. 502] persons in active concert or participation with the respondents to this action and all persons having notice of this action from engaging, sponsoring, inciting or encouraging mass street parades or mass processions or like demonstrations without a permit, trespass on private property after being warned to leave the premises by the owner or person in possession of said private property, congregating on the street or public places into mobs, and unlawfully picketing business establishments or public buildings in the City of Birmingham Jefferson County, State of Alabama or performing acts calculated to cause breaches of the peace in the City of Birmingham, Jefferson County, in the State of Alabama or from conspiring to engage in unlawful street parades, unlawful processions, unlawful demonstrations, unlawful boycotts, unlawful trespasses, and unlawful picketing or other like unlawful conduct or from violating the ordinances of the City of Birmingham and the Statutes of the State of Alabama or from doing any acts designed to consummate (sic) conspiracies to engage in said unlawful acts of parading, demonstrating, boycotting, trespass-

ing and picketing or other unlawful acts, or from engaging in acts and conduct customarily known as [fol. 503] 'Kneel-In's' in churches in violation of the wishes and desires of said churches, until further orders from this Court; and this you will in no wise omit under penalty, etc."

On April 11, 12, and 13, 1963, certain meetings were held at which some or all of petitioners were present.

On April 11, 1963, "The Revs. King, Abernathy, and Shuttlesworth were seated at the round table." Several copies of "a news bulletin put out by the Alabama Christians for Human Rights" were brought there by "Rev. Wyatt Tee Walker." After the bulletin was distributed to members of the press, "... Rev. Martin Luther King took one copy of it and read verbatim the entire text." The paper he read appears in the record as follows:

"COMPLAINANT'S EXHIBIT 2

"News from

"ALABAMA CHRISTIAN MOVEMENT FOR HUMAN RIGHTS  
5051/2 No. 17th Street  
B'ham, Ala.

"FOR RELEASE 12:00 Noon, April 11, 1963

"STATEMENT BY M. L. KING, JR., F. L. SHUTTLESWORTH,  
RALPH D. ABERNATHY, et al. FOR ENGAGING IN PEACEFUL  
DESEGREGATION DEMONSTRATIONS

"In our struggle for freedom we have anchored our faith and hope in the rightness of the Constitution and the moral laws of the universe.

"Again and again the Federal judiciary has made it clear that the privileges (sic) guaranteed under the [fol. 504] First and the Fourteenth Amendments are to (sic) sacred to be trampled upon by the machinery

of state government and police power. In the past we have abided by Federal injunctions out of respect for the forthright and consistent leadership that the Federal judiciary has given in establishing the principle of integration as the law of the land.

"However we are now confronted with recalcitrant forces in the Deep South that will use the courts to perpetuate the unjust and illegal system of racial separation.

"Alabama has made clear its determination to defy the law of the land. Most of its public officials, its legislative body and many of its law enforcement agents have openly defied the desegregation decision of the Supreme Court. We would feel morally and legal responsible to obey the injunction if the courts of Alabama applied equal justice to all of its citizens. This would be

"MORE

MORE

MHH

-2-

sameness made legal. However the ussance (sic) of [fol. 505] this injunction is a blatant of *difference* made *legal*.

"Southern law enforcement agencies have demonstrated now and again that they will utilize the force of law to misuse the judicial process.

"This is raw tyranny under the guise of maintaining law and order. We cannot in all good conscience obey such an injunction which is an unjust, undemocratic and unconstitutional misuse of the legal process.

"We do this not out of any desrespect (sic) for the law but out of the highest respect for *the* law. This

is not an attempt to evade or defy the law or engage in chaotic anarchy. Just as in all good conscience we cannot obey unjust laws, neither can we respect the unjust use of the courts.

"We believe in a system of law based on justice and morality. Out of our great love for the Constitution of the U. S. and our desire to purify the judicial system of the state of Alabama, we risk this critical move with an awareness of the possible consequences involved.

"FOR FURTHER INFORMATION—Phone 324-5944

Wyatt tee walker  
Public Information  
Officer"

[fol. 506] " . . . . Shuttlesworth read from a typed statement more or less re-affirming what was said in the statement that was read by Rev. King." Shuttlesworth made the statement:

" 'That they had respect for the Federal Courts, or Federal Injunctions, but in the past the State Courts had favored local law enforcement, and if the police couldn't handle it, the mob would.' "

" . . . . Rev. Martin Luther, in response to a question, said, 'We will continue today, tomorrow, Saturday, Sunday, Monday, and on.' . . . . "

Lieutenant House testified:

"Q. All right. Now, a moment ago, you made the statement all three of them said that they were going to proceed regardless of the injunction, or words to that affect. I don't recall the exact words you used.

"A. I don't recall whether they said regardless of the injunction, but all three of them in their statement says, 'This statement that Rev. Martin Luther King

read was a joint statement of the three,' and so stated on the top of his statement, and all three of them mentioned knowledge of the injunction, and said they were [fol. 507] going to continue on. I believe Rev. Martin Luther King stated that the—just before stating, 'We will continue on today, tomorrow, and Saturday, Sunday, and Monday, and on', just before that remark, he stated that, 'The attorneys would attempt to dissolve the injunction, but we will continue on today, tomorrow, Saturday, Sunday, Monday, and on'.

"....."

"Q. What sort of reaction did you hear from those present, including the Rev. A. D. King?

"A. He said on three or four occasions, or two I remember specifically, when he remarked, 'Dam the torpedoes', there was a loud applause by everyone in the background, and also the group that was gathered close by there, and also to 'Give me liberty or give me death', there was a lot of noise and applaud to that. There was applauding on several occasions. I don't recall the exact terms."

J. Walter Johnson, Jr., reporter for Associated Press, testified:

"Q. Were you present when the injunction was served?

"A. Yes, I was.

[fol. 508] "Q. You were present, and that was in the middle of the night, you say?

"A. Yes.

"Q. Was this remark made then at that time?

"A. That direct quote, they were marching at the—just a minute, and I will be happy to find it. He said this direct—this is what Shuttlesworth said, speaking of the injunction handed to him: 'This is a flagrant denial of our constitutional privileges.'

"Q. All right.

"A. 'In no way will this retard the thrust of this movement.' He said they would have to study the de-

tails. He said, 'An Alabama injunction is used to misuse certain constitutional privileges that will never be trampled on by an injunction. That is what they were saying that particular night right after the injunction.

"Q. All right, who was present there at that time?

"A. Ralph Abernathy was there, Martin Luther King, Mr. Shuttlesworth, Wyatt Tee Walker, and there was some others I did not recognize, did not know them.

"Q. Some you did not know?

"A. Some I did not know. Abernathy made a statement at that time also. He said, 'An injunction nor [fol. 509] anything else will stop the Negro from obtaining citizenship in his march for freedom.'"

Elvin Stanton, news director for WSGN Radio, testified that he was present at a meeting on April 11th, and that:

"A. The Rev. King said, 'Injunction or no injunction we are going to march tomorrow.' That is a direct quote."

Petitioners did not obtain a permit to march or parade. A march or parade occurred on Friday, April 12, and another march occurred on the streets of Birmingham on Sunday, April 14, 1963.

Willie B. Painter, investigator with Alabama Department of Public Safety, testified that he observed the Friday march, that several of petitioners entered a church, that within several minutes a group came out of the church and began a parade or march in the direction of downtown Birmingham, that:

"A. This group was led by Rev. Martin Luther King, Jr., Rev. Ralph Abernathy, Rev. Shuttlesworth, as I recall, Rev. Bernard Lee was also in the formation leading the group. There were several people following in this formation. As the group marched away from the church in the direction of downtown Birmingham a group of persons who had assembled along the side-

walk and the street followed this procession. This group of people would consist of several hundred. [fol. 510] "Q. Now, do you mean the marchers or the other group?

"A. The group following the marchers. Actually the whole procession was going almost as a group. As the group came out of the church then the whole group of people who had assembled along the sidewalk followed along behind them and I think you could describe it as one procession."

The witness, Painter, further testified that he was present at a church from 2:30 or 3:00 o'clock in the afternoon of Sunday, April 14, 1963; that he observed the petitioner, Walker, talking to a group "and forming a group of people two or three abreast"; that a group came out of the church and began walking rapidly along the sidewalk; that "this large crowd of people that had gathered outside the church began moving along with them"; that there were several hundred people within this group; that an object struck the windshield of one of the city motors and broke the windshield; that the witness saw a negro man throw a brick which "passed within a close range of one of the police officers there in the street on duty."

James Ware, newspaper photographer, testified that a rock, "About the size of a large grapefruit" hit him on the back of the head and caused a knot which was still sore; that a lot of people were "hollering, apparently at the policemen making the arrests"; that the witness saw only [fol. 511] two rocks but heard several more falling around him; that he was concentrating on taking pictures of what was happening; that he identified A. D. King and Wyatt Tee Walker in the picture.

The witness Ware identified four pictures, which were introduced into evidence and are before us. Ware identified the pictures as being pictures which he took of the paraders on Sunday afternoon. The pictures show people walking in and entirely occupying a street from curb to curb on each side and on the sidewalks.

On Monday, April 15, 1963, the City of Birmingham filed petition alleging that respondents had violated the injunction and praying that rule nisi issue to respondents requiring them to show cause why they should not be adjudged and punished for contempt. Rule nisi did issue, hearing was had, and those respondents who have applied for certiorari were adjudged guilty of contempt of the circuit court and committed to the sheriff for five days and fined Fifty dollars each. We review this judgment by certiorari.

On the same Monday, April 15, 1963, respondents filed a motion to dissolve the temporary injunction which had been issued on April 10, 1963.

During the hearing on the charge that petitioners had violated the injunction, the trial court stated the issues presented by the evidence as follows:

"The Court: The only charge has been this particular parade, the one on Easter Sunday and the one on [fol. 512] Good Friday, and on the question of the meeting at which time some press release was issued. Am I correct in that?

"Mr. McBee: Essentially that is correct.

"The Court: I don't know of any other evidence or any other occasions other than those, and I see no need of putting on testimony to rebut something where there has been no proof along that line."

Petitioners do not appear to deny the charge that they, or a number of them, did parade or march without a permit contrary to the order temporarily enjoining them ".... from engaging, sponsoring, inciting or encouraging mass street parades or mass processions or like demonstrations without a permit . . . ."

Petitioners, on page 3 of brief, filed in this court July 19, 1963, admit that "After issuance of the injunctive order, petitioners and others continued their participation in these protest demonstrations and accordingly were held in contempt of the injunctive decree." On page 3 of brief petitioners say:

"The circumstances out of which this action arose are well known to the court. During April and May 1963, petitioners and others participated in protest demonstrations in Birmingham, Alabama in the form [fol. 513] 'of picketing, 'sit-ins', and marches on the streets of the City of Birmingham, designed to evidence dissatisfaction with continuing racial segregation in that city and to persuade city officials and others to put an end to segregation. About one week after these demonstrations began, the City of Birmingham 'secured an injunction from the Circuit Court for the Tenth Judicial Circuit designed to thwart their continuation. After issuance of the injunctive order, petitioners and others continued their participation in these protest demonstrations and accordingly were held in contempt of the injunctive decree. Petitioners argued at the contempt hearing that the injunctive decree, designed as it was to prevent the exercise of their right to protest, was an invalid order. Petitioners reiterated this argument in the petition for certiorari filed herein, in the brief filed in support of the petition, and on oral argument before this Court on May 15, 1963.

"Little, therefore, remains to be added to what has already been urged in this Court. The issuance of the injunctive order, seen against the backdrop of the exercise by petitioners of well-established constitutional [fol. 514] rights was beyond the jurisdiction of the court and hence void. . . ."

In the light of petitioners' statement in brief, it would be difficult to decide that petitioners did not violate the temporary injunction against engaging in mass street parades without a permit. Petitioners did engage in and incite others to engage in mass street parades and neither petitioners nor anyone else had obtained a permit to parade on the streets of Birmingham.

Petitioners argue that the injunctive order is void and, for that reason, the judgment of contempt is void.

The circuit court, in equity, is a court of general equity jurisdiction and has power to issue injunctions. Section 144 of Constitution of 1901 recites:

"Sec. 144. A circuit court, or a court having the jurisdiction of the circuit court, shall be held in each county in the state at least twice in every year, and judges of the several courts mentioned in this section may hold court for each other when they deem it expedient, and shall do so when directed by law. The judges of the several courts mentioned in this section shall have power to issue writs of injunction, returnable to the courts of chancery, or courts having the jurisdiction of courts of chancery."

§§ 1038 and 1039, Title 7, Code 1940, recite:

[fol. 515] § 1038. Injunctions may be granted, returnable into any of the circuit courts in this state, by the judges of the supreme court, court of appeals, and circuit courts, and judges of courts of like jurisdiction."

§ 1039. Registers in circuit court may issue an injunction, when it has been granted by any of the judges of the appellate or circuit courts when authorized to grant injunctions, upon the fiat or direction of the judge granting the same indorsed upon the bill of complaint and signed by such judge."

Petitioners do not argue that there was any failure to observe procedural requirements in the issuance of the injunction. We discuss later the question of lack of service on some petitioners.

Petitioners rest their case on the proposition that Section 1159 of the General City Code of Birmingham, which regulates street parades, is void because it violates the first and fourteenth amendments of the Constitution of the

United States, and, therefore, the temporary injunction is void as a prior restraint on the constitutionally protected rights of freedom of speech and assembly."

It is to be remembered that petitioners are charged with violating a temporary injunction. We are not reviewing a denial of a motion to dissolve or discharge a temporary [fol. 516] injunction. Petitioners did not file any motion to vacate the temporary injunction until after the Friday and Sunday parades. Instead, petitioners deliberately defied the order of the court and did engage in and incite others to engage in mass street parades without a permit.

The Supreme Court of the United States has said:

" . . . . This Court has used unequivocal language in condemning such conduct, and has in *United States v. Shipp*, 203 U. S. 563 (1906), provided protection for judicial authority in situations of this kind. In that case this Court had allowed an appeal from a denial of a writ of *habeas corpus* by the Circuit Court of Tennessee. The petition had been filed by Johnson, then confined under a sentence of death imposed by a state court. Pending the appeal, this Court issued an order staying all proceedings against Johnson. However, the prisoner was taken from jail and lynched. Shipp, the sheriff having custody of Johnson, was charged with conspiring with others for the purpose of lynching Johnson, with intent to show contempt for the order of this Court. Shipp denied the jurisdiction of this Court to punish for contempt on the ground that the stay order was issued pending an appeal over which this Court had no jurisdiction because the constitutional questions alleged were frivolous and only [fol. 517] a pretense. The Court, through Mr. Justice Holmes, rejected the contention as to want of jurisdiction, and in ordering the contempt to be tried, stated:

" 'We regard this argument as unsound. It has been held, it is true, that orders made by a court having

no jurisdiction to make them may be disregarded without liability to process for contempt. *In re Sawyer*, 124 U. S. 200; *Ex parte Fisk*, 113 U. S. 713; *Ex parte Rowland*, 104 U. S. 604. But even if the Circuit Court had no jurisdiction to entertain Johnson's petition, and if this court had no jurisdiction of the appeal, this court, and this court alone, could decide that such was the law. It and it alone necessarily had jurisdiction to decide whether the case was properly before it. On that question, at least, it was its duty to permit argument and to take the time required for such consideration as it might need. See *Mansfield, Coldwater & Lake Michigan Ry. Co. v. Swan*, 111 U. S. 379, 387. Until its judgment declining jurisdiction should be announced, it had authority from the necessity of the case to make orders to preserve the existing conditions and the subject of the petition, just as the state court was [fol. 518] bound to refrain from further proceedings until the same time. Rev. Stat. § 766; act of March 3, 1893, c. 226, 27 Stat. 751. The fact that the petitioner was entitled to argue his case shows what needs no proof, that the law contemplates the possibility of a decision either way, and therefore must provide for it.' 203 U. S. 573.

"If this Court did not have jurisdiction to hear the appeal in the *Shipp* case, its order would have had to be vacated. But it was ruled that only the Court itself could determine that question of law. Until it was found that the Court had no jurisdiction, '... it had authority from the necessity of the case to make orders to preserve the existing conditions and the subject of the petition ... !'

"Application of the rule laid down in *United States v. Shipp*, *supra*, is apparent in *Carter v. United States*, 135 F. 2d 858 (1943). There a district court, after making the findings required by the Norris-LaGuardia

Act, issued a temporary restraining order. An injunction followed after a hearing in which the court affirmatively decided that it had jurisdiction and overruled the defendants' objections based upon the absence of diversity and the absence of a case arising under [fol. 519] a statute of the United States. These objections of the defendants prevailed on appeal, and the injunction was set aside. *Brown v. Coumanis*, 135 F. 2d 163 (1943). But in *Carter*, a companion case, violations of the temporary restraining order were held punishable as criminal contempt. Pending a decision on a doubtful question of jurisdiction, the District Court was held to have power to maintain the *status quo* and punish violations as contempt.

"In the case before us, the District Court had the power to preserve existing conditions while it was determining its own authority to grant injunctive relief. The defendants, in making their private determination of the law, acted at their peril. Their disobedience is punishable as criminal contempt.

"Although a different result would follow were the question of jurisdiction frivolous and not substantial, such contention would be idle here. The applicability of the Norris-LaGuardia Act to the United States in a case such as this had not previously received judicial consideration, and both the language of the Act and its legislative history indicated the substantial nature of the problem with which the District Court was faced. [fol. 520] "Proceeding further, we find impressive authority for the proposition that an order issued by a court with jurisdiction over the subject matter and person must be obeyed by the parties until it is reversed by orderly and proper proceedings. This is true without regard even for the constitutionality of the Act under which the order is issued. In *Howat v. Kansas*, 258 U. S. 181, 189-90 (1922) this Court said:

"An injunction duly issuing out of a court of general jurisdiction with equity powers upon pleadings prop-

erly invoking its action, and served upon persons made parties therein and within the jurisdiction, must be obeyed by them however erroneous the action of the court may be, even if the error be in the assumption of the validity of a seeming but void law going to the merits of the case. It is for the court of first instance to determine the question of the validity of the law, and until its decision is reversed for error by orderly review, either by itself or by a higher court, its orders based on its decision are to be respected, and disobedience of them is contempt of its lawful authority, to be punished.'

[fol. 521] "Violations of an order are punishable as criminal contempt even though the order is set aside on appeal, *Worden v. Searls*, 121 U. S. 14 (1887), or though the basic action has become moot, *Gompers v. Bucks Stove & Range Co.*, 221 U. S. 418 (1911):

"We insist upon the same duty of obedience where, as here, the subject matter of the suit, as well as the parties, was properly before the court; where the elements of federal jurisdiction were clearly shown; and where the authority of the court of first instance to issue an order ancillary to the main suit depended upon a statute, the scope and applicability of which were subject to substantial doubt. The District Court on November 29 affirmatively decided that the Norris-LaGuardia Act was of no force in this case and that injunctive relief was therefore authorized. Orders outstanding or issued after that date were to be obeyed until they expired or were set aside by appropriate proceedings, appellate or otherwise. Convictions for criminal contempt intervening before that time may stand.

".....

"Assuming, then, that the Norris-LaGuardia Act applied to this case and prohibited injunctive relief at the request of the United States, we would set aside

[fol. 522] the preliminary injunction of December 4 and the judgment for civil contempt; but we would, subject to any infirmities in the contempt proceedings or in the fines imposed, affirm the judgments for criminal contempt as validly punishing violations of an order then outstanding and unreversed." *United States v. United Mine Workers of America*, 336 U. S. 258, 290-295.

No useful purpose would be served by further discussion of this point. See concurring opinion of Harlan, J., in *In Re Green*, 369 U. S. 689, 693.

We hold that the circuit court had the duty and authority, in the first instance, to determine the validity of the ordinance, and, until the decision of the circuit court is reversed for error by orderly review, either by the circuit court or a higher court, the orders of the circuit court based on its decision are to be respected and disobedience of them is contempt of its lawful authority, to be punished. *Howat v. Kansas*, 258 U. S. 181.

Petitioners Martin Luther King, Jr., Ralph Abernathy, A. D. King, Wyatt Tee Walker, and F. L. Shuttlesworth, are named in the injunction and were served with a copy on April 11, 1963. That they were active in inciting others to parade and actively participated in the parades or marches after they were served with a copy of the injunction is clearly shown by the testimony. Petitioners do not [fol. 523] seem to argue in brief to the contrary. As to those five of the petitioners last named the judgment is due to be and is affirmed.

Petitioner Porter was served with a copy of the injunction on April 12, 1963, at 4:13 p.m. There is testimony that with respect to his participation in the parade on Sunday, April 14, 1963, "Rev. Porter stated that he was one of the leaders." There is other testimony that he engaged in the Sunday parade. The judgment against him is affirmed.

The general rule is that one who violates an injunction is guilty of contempt, although he is not a party to the

injunction suit, if he has notice or knowledge of the injunction order, and is within the class of persons whose conduct is intended to be restrained, or acts in concert with such a person. See 15 A.L.R. 387, and authorities there cited.

The instant injunction enjoins the named respondents "and all other persons in active concert or participation with the respondents to this action." As to the petitioners who were not named as parties in the bill, or were not served with a copy of the injunction, we come now to consider the evidence going to show their knowledge of the terms of the injunction with respect to parades and the conduct of such petitioners in participating in the parades or marches.

Petitioners Hayes, Smith, and Fisher were not served with a copy of the injunction until after the Sunday march. Each of them participated in the Sunday parade and there is evidence that each of them had knowledge of the injunction prior to that parade. Fisher testified that he attended the Friday and Saturday meetings. He also testified:

[fol. 524] "Q. What did you hear about the injunction? What did they tell you about it?

"A. I only heard about the injunction. It wasn't interpreted to me.

"Q. Was it interpreted to you you would probably have to go to jail if you took part in that march or walk?

"A. Yes, but I didn't see any reason I would have to go.

"Q. I understand, but you were not told if you got in that march you would have to go to jail?

"A. I was told if I walked on the streets of Birmingham I would have to go to jail.

"Q. I am talking about this Easter Sunday procession. That is what they were talking about?

"A. That's right."

The witness Jones, City Detective, referring to Hayes, testified that:

"A. He stated he was with the leaders on the march. I asked him about the injunction. He knew of it, he said. I asked him was he just marching in the face of it anyway, and he said, 'Yes, he was doing it for human dignity.'"

Jones also testified that petitioner Smith stated that he "had knowledge of the injunction" prior to his participation in the Sunday parade.

[fol. 525] We think it would require of the trial court an unduly naive credulity to declare that the court erred in concluding that Hayes and Fisher had knowledge that marching on the streets was enjoined and that they knowingly and deliberately violated the injunction by marching or parading on Sunday. As to Hayes and Fisher the judgment against them is affirmed.

As to petitioner Smith we reach a different result. Smith was not a party to the suit and was not served with a copy of the injunction prior to the Sunday March. He was bound, alike with other members of the public, to observe its restrictions when known, to the extent that he must not aid or abet its violation by others, and the power of the court to proceed against one so offending and punish for the contemptuous conduct is inherent and indisputable. *Garrigan v. United States*, 89 C.C.A. 494, 163 Fed. 16. But, in order to convict a person of contempt where he is not a party and has not been served with a copy of the order, it must be shown clearly that he had knowledge of the order for the injunction in such a way that it can be held that he understood it, and, with that knowledge committed a wilful violation of the order. *Dowagiac Mfg. Co. v. Minnesota Moline Plow Co.*, 124 Fed. 736.

There is evidence that Smith "had knowledge" of the injunction and he testified that he had heard about the injunction on the radio, "Maybe Saturday," before the Sunday March. It may well be that Smith was fully advised of the terms of the injunction, but we think a finding to that effect must rest on speculation rather than on a

[fol. 526] reasonable inference from the testimony. The injunction restrains acts other than parading. Knowledge of other enjoined acts would not be knowledge of the injunction against parading. We hold that it is not clearly shown that Smith had knowledge of the injunction in such a way that it can be held that he understood it and with that knowledge committed a wilful violation of the injunction. The judgment of contempt against Smith is quashed.

We have not found in the record where petitioners Young and Bevel were served with a copy of the injunction. We have not found evidence to show that either of them participated in the march on either Friday or Sunday. We are not persuaded that the evidence sustains the judgment of contempt against them, and as to Young and Bevel the judgment holding them in contempt is quashed.

Affirmed in part.

Quashed in part.

Livingston, C. J., and Lawson and Goodwyn, JJ., concur.

[fol. 527]

IN THE SUPREME COURT OF ALABAMA

JEFFERSON CIRCUIT COURT

In Equity

6 Div. 999

WYATT TEE WALKER, et al.

v.

CITY OF BIRMINGHAM

JUDGMENT OF AFFIRMANCE—December 9, 1965

Come the parties by attorneys and the record and matters therein assigned for errors being submitted on petition for certiorari and the return thereto and briefs, and the same being duly examined and understood by the Court,

It Is Considered, Ordered, Adjudged and Decreed that the decree of the Circuit Court insofar as it pertains to Wyatt Tee Walker, Martin Luther King, Jr., Ralph Abernathy, A. D. King, J. W. Hayes, T. L. Fisher, F. L. Shuttlesworth and John Thomas Porter be and the same is in all things affirmed.

It Is Further Considered, Ordered, Adjudged and Decreed that as to the petitioners, Andrew Young, N. H. Smith, Jr., and James Bevel, the decree of the Circuit Court adjudging these petitioners guilty of contempt be and the same is hereby quashed.

[fol. 528] It Is Further Ordered, Adjudged and Decreed that Wyatt Tee Walker, Martin Luther King, Jr., Ralph D. Abernathy, A. D. King, J. W. Hayes, T. L. Fisher, F. L. Shuttlesworth and J. T. Porter, petitioners, and Jas. Esdale, Willie Esdale and Esdale Bail Bond Company, pay the costs incident to this proceeding in this Court and in the Court below, for which costs let execution issue.

Opinion by Coleman, J.

Livingston, C. J., Lawson and Goodwyn, J.J., concur.

[fol. 531]

IN THE SUPREME COURT OF ALABAMA

[Title omitted]

ORDER OVERRULING PETITION FOR REHEARING—

January 20, 1966

It Is Ordered that the application for rehearing filed on December 23, 1965, be and the same is hereby overruled.

[fol. 536]

IN THE SUPREME COURT OF ALABAMA

OCTOBER TERM 1965-66

[Title omitted]

STAY ORDER—January 26, 1966

The Appellants in the above styled cause having made application for suspension of sentence and said petition being duly examined and understood by the Court,

It Is Hereby Ordered, Adjudged and Decreed that the Certificate of Affirmance be recalled by the Clerk of this Court.

It Is Further Ordered, Adjudged and Decreed that the execution of the judgment of affirmance is hereby stayed for ninety (90) days from the 26th day of January, 1966 to enable Appellants to apply for and obtain, if they can, a review of said case by the Supreme Court of the United States.

[fol. 537] In the event the Appellants do not apply to the Supreme Court of the United States for a Writ of Certiorari within ninety (90) days from the 26th day of January, 1966, the stay and execution of said Judgment of Affirmance shall cease and terminate.

It Is Further Ordered, Adjudged and Decreed that the execution and enforcement of said judgment be further stayed in the event the Appellants file a Petition for Certiorari in the Supreme Court of the United States to review said Judgment of Affirmance and until the Supreme Court of the United States renders a final decision affirming or reversing the judgment of this Court.

Done this the 26th day of January, 1966.

Livingston, C.J., Simpson, Coleman and Harwood, J.J.,  
concur.

[fol. 538]

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1965-66

ORDER RECALLING CERTIFICATE—January 26, 1966

To the Register of the Circuit Court of Jefferson County—  
Greeting:

Whereas, in the matter of Wyatt Tee Walker, et al, Appellant, vs. The City of Birmingham, Appellee, recently pending in the Supreme Court of Alabama, on appeal from the said Circuit Court of Jefferson County, our Supreme Court did on the 9th day of December, 1965, render a decree of affirmance, in part, etc. in said cause; and,

Whereas, a certificate of such action of the Supreme Court was duly issued to you, and thereafter an application for a rehearing of said cause was filed in this Court on the 23rd day of December, 1965:

Now, it is hereby certified, that our Supreme Court, or one of the Justices thereof, did, on the 26th day of January, 1966, order that the said certificate be recalled. And you will accordingly return the same to this office at once, together with copy of the opinion in said cause issued to you.

Witness, Richard W. Neal, Deputy Clerk of the Supreme Court of Alabama, at the Judicial Building, this the 26 day of January, 1966.

Richard W. Neal, Deputy Clerk of the Supreme Court of Alabama.

[fol. 539], Clerk's Certificate (omitted in printing).

[fol. 540]

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SUPREME COURT OF THE UNITED STATES

No. ....—October Term, 1965

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WYATT TEE WALKER, et al., Petitioners,

v.

CITY OF BIRMINGHAM.

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ORDER EXTENDING TIME TO FILE PETITION FOR  
WRIT OF CERTIORARI—April 13, 1966

Upon Consideration of the application of counsel for petitioner(s),

It Is Ordered that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including June 19th, 1966.

Hugo L. Black, Associate Justice of the Supreme Court of the United States.

Dated this 13th day of April, 1966.

[fol. 541]

## SUPREME COURT OF THE UNITED STATES

No. 249—October Term, 1966

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WYATT TEE WALKER, et al., Petitioners,

v.

CITY OF BIRMINGHAM, etc.

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## ORDER ALLOWING CERTIORARI—October 10, 1966

The petition herein for a writ of certiorari to the Supreme Court of the State of Alabama is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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